

SUPREME COURT OF THE UNITED STATES

CHANCERY DIVISION

IN EQUITY

**THE CHICAGO ROCK ISLAND AND PACIFIC RAILWAY
COMPANY, PLAINTIFF IN ERROR,**

vs.

E. H. STORM,

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS

FILED JANUARY 24, 1922

(16782)

(16,788.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898

No. 236.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY
COMPANY, PLAINTIFF IN ERROR,

vs.

E. H. STURM.

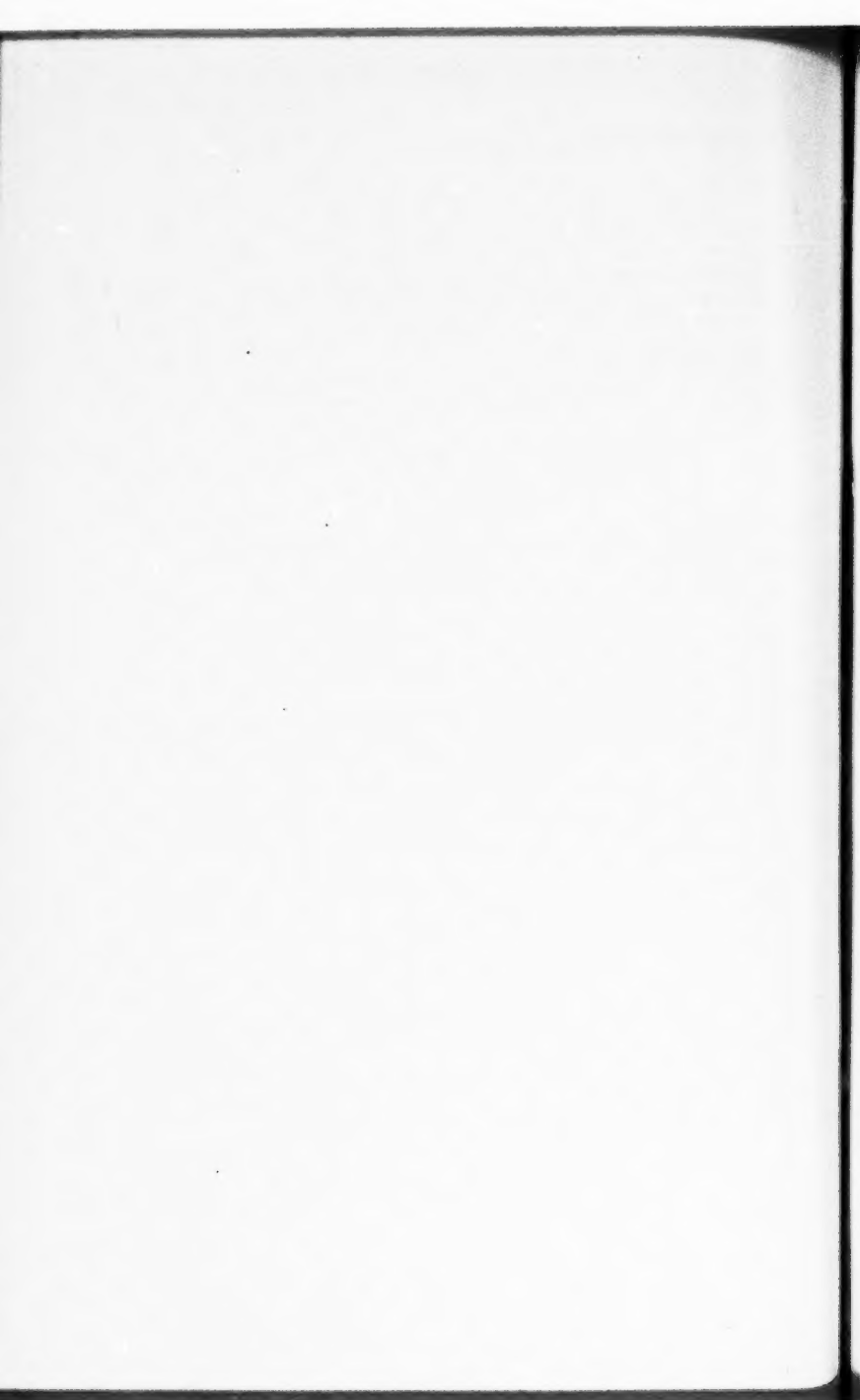
IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

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1 In the Supreme Court of the State of Kansas.

Be it remembered that on the first day of April, A. D. 1897, there was filed in the office of the clerk of the supreme court of the State of Kansas a petition in error & precipe for summons in error, with a transcript of the record of the court of appeals, northern department, central division, of the State of Kansas, attached thereto and made a part thereof, which is in words and figures as follows, to wit:

2 10831.

In the Supreme Court of the State of Kansas.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAIL- way Company, Plaintiff in Error,	} No. 10831, 10210.
v.	
E. H. STURM, Defendant in Error.	

Petition in Error.

Said The Chicago, Rock Island and Pacific Railway Company, plaintiff in error, complains of said E. H. Sturm, defendant in error, for that the said defendant in error, at the March term, A. D. 1897, of the Kansas court of appeals, northern department, central division, of the State of Kansas, to wit, on the 18th day of March, A. D. 1897, recovered a judgment by the consideration of said Kansas court of appeals aforesaid against said The Chicago, Rock Island and Pacific Railway Company, plaintiff in error, in a certain action and proceeding there pending in said Kansas court of appeals, northern department, central division, wherein said The Chicago, Rock Island and Pacific Railway Company was the plaintiff in error and the said E. H. Sturm was the defendant in error; a certified copy of the judgment of the said Kansas court of appeals and of the opinion and syllabus of said court in said case are hereto annexed, marked Exhibits "A," "B," and "C," and made a part of this petition in error; and said plaintiff in error avers that this proceeding is a matter of right, and that there was and is involved herein and in said action the Constitution and laws of the United States.

Said The Chicago, Rock Island and Pacific Railway Company, plaintiff in error, avers that said plaintiff in error is aggrieved by the judgment, opinion, and syllabus filed and rendered in said case on said 18th day of March, A. D. 1897, and at the March term, stated aforesaid, and further avers that there is material error in said judgment, opinion, and syllabus and proceedings aforesaid, and in each of them, as shown by said judgment, syllabus, opinion, and proceedings aforesaid, and the record on file in said Kansas court of appeals, northern department, central division, in said case aforesaid affecting materially and prejudicially the substantial rights of the plaintiff in error in the precise points and particulars following, to wit:

1. The said Kansas court of appeals, northern department, central division, erred in affirming the judgment of the district court of Republic county, Kansas, referred to in said judgment of March 18, 1897, of said Kansas court of appeals, and also in rendering judgment against said plaintiff in error to pay the costs taxed in said case and proceedings in said Kansas court of appeals to the amount of \$— against this plaintiff in error and ordering execution to issue against this plaintiff in error to collect the same.

2. The said court erred in ruling and deciding that "where an employé of a corporation doing business in this State brings an action in the courts of Kansas for the recovery of wages due him for work in this State, where he resides, and said wages are by

3 the laws of Kansas exempt from attachment or garnishment, the corporation cannot defeat a recovery thereon by showing that it had been garnished in another State in an action in which no jurisdiction is acquired of the person of said employé," as stated in the syllabus of said court in said case.

3. The said court erred in ruling and deciding that the case of the Missouri Pacific Railway Company *v. Sharitt*, 43 Kansas, 375, as an authority of this court, deciding the questions involved in this case adversely to the said plaintiff in error.

4. The said court erred in ruling and deciding that it was bound by the decision and alleged authority of the case of the Missouri Pacific Railway Company *v. Sharitt*, 43 Kansas, 375, the question of the violation of section one, article four, of the Constitution of the United States not having been raised in that case, nor considered or decided by this court therein.

5. The said court erred in expressly setting aside and holding as nugatory and worthless and as no authority whatever the decision of said court of appeals in the case of the Union Pacific Railway Company *v. Baker*, decided by said court January 11, 1897, and reported in the Pacific Reporter, vol. 47, on page 563.

6. That said court erred in not rendering judgment for this plaintiff in error and against said defendant in error.

7. That said court erred in rendering judgment, as before stated, and in handing down the syllabus and opinion, as before stated, upon the matters and things hereinbefore referred to.

8. That said judgment, decision, opinion, and syllabus of said court of appeals is in conflict with and in direct violation of section 1 of article IV of the Constitution of the United States and of the laws of the United States.

Wherefore said The Chicago, Rock Island and Pacific Railway Company, plaintiff in error, prays that this honorable court will, as a matter of right to this plaintiff in error and for the reason that this case involves the Constitution and laws of the United States, within sixty days from the said 18th day of March, 1897, make a good and sufficient order directing the said case of The Chicago, Rock Island and Pacific Railway Company, plaintiff in error, *v. E. H. Sturm*, defendant in error, to be certified from the said Kansas court of appeals to this court upon the copy of the record to be properly transmitted to this court by the Kansas court

of appeals aforesaid; and this plaintiff in error further prays that said judgment of said Kansas court of appeals aforesaid and the judgment of the district court of Republic county, Kansas, in said case be reversed and held for naught, and for all other proper relief, and that judgment be rendered in this court for plaintiff in error and for costs of suit, including the costs of this proceeding in error.

M. A. LOW,
W. F. EVANS &
J. E. DOLMAN,

*Attorneys for Plaintiff in Error, The Chicago, Rock
Island and Pacific Railway Company.*

Filed April 1, 1897.

C. J. BROWN,
Clerk Sup. Court.

4 Clerk supreme court :

Please issue summons in error in the above-entitled cause, returnable according to law.

M. A. LOW,
W. F. EVANS &
J. E. DOLMAN,
Att'ys for Pl'ff in Error.

EXHIBIT "C."

Syllabus.

Kansas Court of Appeals, Northern Department, Central Division,	
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COM-	
pany, Plaintiff in Error,	} No. 196.
<i>vs.</i>	
E. H. STURM, Defendant in Error.	

Error from the district court of Republic county, affirmed.

By the court, WELLS, J. :

1. Where an employee of a corporation doing business in this State brings an action in the courts of Kansas for the recovery of wages due him for work in this State, where he resides, and said wages are by the laws of Kansas exempt from attachment or garnishment, the corporation cannot defeat a recovery thereon by showing that it has been garnished in another State in an action in which no jurisdiction is acquired of the person of said employee.

I, W. H. Gates, clerk of the Kansas court of appeals, northern department, central division, do hereby certify that the above and foregoing is a true, full, and complete copy of the syllabus in the case of C., R. I. & P. Ry Co. *vs.* E. H. Sturm as the same appears on file in my office.

Witness my hand and the seal of said court, at my office, in Concordia, the 24 day of M'ch, 1897.

[SEAL.]

W. H. GATES, *Clerk.*

5

"EXHIBIT B."

Kansas Court of Appeals, Northern Department, Central Division.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COM-
pany, Plaintiff in Error,

vs.

E. H. STURM, Defendant in Error.

} No. 196.

Error from the district court of Republic county, affirmed.

The facts of this case are substantially as follows: E. H. Sturm worked for the C., R. I. & P. R'y Co. during the fall and winter of 1893, for which it was indebted to him. On December 13th, 1893, E. H. Willard brought an action before a justice of the peace of Pottawattamie county, Iowa, against E. H. Sturm and garnisheed said railway company. On the 18th day of January, 1894, Sturm brought an action before a justice of the peace of Republic county, Kansas, for the recovery of said wages, and recovered judgment thereon February 5th, 1894, for \$140.00 and costs. Said case was duly appealed to the district court of Republic county, Kansas. On February 20th, 1894, judgment was rendered by the justice in Iowa against said Sturm as debtor and said company as garnishee for \$76.16 debt and \$19.00 costs, and said case was duly appealed by said company to the district court of Pottawattamie county, Iowa. On October 10th, 1894, said case came on for hearing in the district court of Republic county, Kansas, and said company, defendant, filed a motion, supported by affidavit, asking a continuance of said cause on account of the pendency of said cause in Iowa, which motion was refused; thereupon said defendant filed its answer setting up said garnishment, judgment, and proceedings in Iowa, and asking to be discharged and go hence with its costs.

Thereafter, on the 12th day of October, 1894, said plaintiff, Sturm, replied to said answer, setting up the exemption of said wages and denying the jurisdiction of the Iowa court.

Thereafter, on the issues thus joined, the cause was tried to the court on October 23rd, 1894, and the court, on the supposed authority of the case of Mo. Pac. R'y Co. *vs.* Sharritt, 43 Kans., 375, found for the plaintiff and rendered judgment against said defendant for \$110.00, to which the defendant excepted and brings the case here for review.

The court below in giving its decision founded it exclusively on the Sharritt case, and plainly intimated that were it not for that decision the judgment would be the other way. The syllabus of that case, which is the law decided, can be distinguished from this, as in that case it is assumed that the wages were exempt under the laws of both States, which would make a very important difference. In that case also no question of the violation of the United States

statute was raised, but a careful examination of the opinion of the commissioner, the concurring opinion of Justice Valentine, and a very able and exhaustive review of the questions involved by Chief Justice Horton in his dissenting opinion satisfies us that every phase of the questions necessary for a decision of this case was carefully considered by our supreme court, and by a majority of the court decided adversely to the claim of the plaintiff in error in this

6 case, and, having been so decided, we are bound by the decision until reversed by the court that rendered it, without regard to our own views on the weight of authority or the strength of reasoning offered or used by the prospective parties. We are referred to the case of Union Pacific Railway Co. *vs.* Baker, decided by this court January 11th, 1897, Gilkerson, P. J., delivering the opinion, 47 Pac. Rep., 563, as holding contrary to these views, but if such is the effect of that decision this court would still be bound by the decision of the supreme court.

With these views, it is necessary to consider the other questions discussed. The decision of the court below will be affirmed.

All the judges concurring.

I, W. H. Gates, clerk of the Kansas court of appeals, northern department, central division, do hereby certify that the above and foregoing is a true, full, and complete copy of the opinion in the case of the C. R. I. & P. R'y Co. *vs.* E. H. Sturm as the same appears on file in my office.

Witness my hand and the seal of said court, at my office, in Concordia, the 24 day of March, 1897.

[SEAL.]

W. H. GATES, *Clerk.*

"EXHIBIT A."

Copy.

Kansas Court of Appeals, Northern Department, Central Division.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COM- pany, Plaintiff in Error,	} No. 195.
<i>vs.</i>	
E. H. STURM, Defendant in Error.	

Now, on this 18th day of March, 1897, this cause comes on for decision, and thereupon it is ordered and adjudged that the judgment of the court below be affirmed. It is further ordered that the plaintiff in error pay the costs of this case in this court, taxed at \$—, and hereof let execution issue.

Mahan, P. J., delivered the opinion.

JOHN H. MAHAN,
Presiding Judge.

To the rendition of which judgment the said plaintiff in error then and there excepted at the time.

STATE OF KANSAS, }
 Shawnee County, } ss:

I, W. H. Thompson, clerk of the Kansas court of appeals, northern department, eastern division, do hereby certify that the above is the original order and judgment of the court in said cause.

Witness my hand and the official seal of said court, at Topeka, this 18th day of March, 1897.

[SEAL.]

W. H. THOMPSON, *Clerk*.

I, W. H. Gates, clerk of the Kansas court of appeals, northern department, central division, do hereby certify that the above and foregoing is a true, full, and complete copy of the judgment entry in the case of The C., R. I. & P. R'y Co. *vs.* E. H. Sturm as the same appears on file in my office.

Witness my hand and the seal of said court, at my office, in Concordia, the 24 day of March, 1897.

[SEAL.]

W. H. GATES, *Clerk*.

Filed March 22, 1897.

W. H. GATES,

Clerk Court of Appeals, Northern Dep't, Cent. Division.

7

Court copy.

In the Supreme Court of the State of Kansas.

THE CHICAGO, ROCK ISLAND AND PACIFIC Railway Company, Plaintiff in Error, <i>vs.</i> E. H. STURM, Defendant in Error.	}	196. Petition in Error.
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Said plaintiff in error, The Chicago, Rock Island and Pacific Railway Company, alleges and shows to the court:

1. That it is and at all times herein mentioned was a corporation organized and existing under and by virtue of law.

2. That on the 23rd day of October, 1894, said E. H. Sturm, defendant in error, obtained a judgment in the district court of Kansas within and for the county of Republic, by the consideration of said court, for the sum of \$110.00 and costs, taxed at \$—, against said plaintiff in error, The Chicago, Rock Island and Pacific Railway Company, in a certain action then pending in said district court, wherein said plaintiff in error was defendant and said defendant in error was plaintiff, an original case-made of which judgment and the pleadings and proceedings had in said action in said district court is hereto attached and made a part of this petition in error.

Said The Chicago, Rock Island and Pacific Railway Company alleges that there is error in said judgment and proceedings in this, to wit:

1. That the court erred in sustaining objections of the plaintiff below to competent and proper questions propounded by the de-

defendant below on the cross-examination of the witnesses of the plaintiff below.

2. That the court erred in overruling the objections of the defendant below to incompetent and improper questions propounded by the plaintiff below.

3. That the court erred in admitting any evidence under the pleadings.

4. That the court erred in overruling the motion of plaintiff in error for a continuance of said cause and in refusing to grant said continuance.

5. That the court erred in rendering judgment in favor of defendant in error against plaintiff in error.

6. That the court erred in overruling the motion of defendant below for a new trial.

7. That the court erred in refusing to grant the defendant below a new trial.

8. That the decision of the court in rendering judgment against the plaintiff in error is in violation of and in conflict with section one of article four of the Constitution of the United States of America.

Wherefore said plaintiff in error prays that said judgment be reversed and set aside by this court.

M. A. LOW,
W. F. EVANS &
J. E. DOLMAN,

Attorneys for Plaintiff in Error.

Filed Feb. 18, 1895.

C. J. BROWN,
Clerk Sup. Court.

Filed Jul- 22, 1895.

D. A. VALENTINE,
Clk Court of Appeals, Northern Dep., Cent. Division.

8 Supreme Court of the State of Kansas.

To the clerk of said court :

Please issue summons in the above-entitled cause, returnable according to law.

M. A. LOW,
W. F. EVANS &
J. E. DOLMAN,

Attorneys for Plaintiff in Error.

Filed Feb. 18, 1895.

C. J. BROWN,
Clerk Sup. Court.

Filed Jan. 12, 1895.

A. ELLINGSON,
Clerk Dist. Court.

In the District Court of Republic County, Kansas.

E. H. STURM, Plaintiff,	}	Case-made.
<i>vs.</i>		
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY Company, Defendant.		

Be it remembered that heretofore, to wit, on the 18th day of January, A. D. 1894, the above-named plaintiff commenced an action against the above-named defendant, The Chicago, Rock Island & Pacific Railway Company, by filing in the office of J. A. Lacey, a justice of the peace within and for the city of Belleville, in Republic county, Kansas, a bill of particulars, which was and is — words and figures as follows, to wit :

9 Before J. A. Lacey, a justice of the peace of Belleville, in Republic county, Kansas.

E. H. STURM, Plaintiff,	}	Bill of Particulars.
<i>vs.</i>		
CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY Company (a Corporation), Defendant.		

Said plaintiff alleges that said defendant is indebted to said plaintiff in the sum of one hundred and forty and — dollars for upon account for personal services rendered by the plaintiff for the defendant, said account being due and unpaid this 18th day of Jan., 1894, the same being all wages due plaintiff from the defendant up to this 18th day of January, 1894.

That there is due said plaintiff on said account from said defendant one hundred and forty and — dollars, which he claims, with interest, at the rate of — per cent. per annum, from the 18th day of January, 1894.

E. H. STURM,
By V. T. BULLEN,
Plaintiff's Attorney.

(Endorsed :) " Filed this 18th day of January, 1894. J. A. Lacey, justice of the peace. Filed March 12th, 1894. A. Ellingson, clerk, by I. O. Savage, deputy."

That thereupon, on said 18th day of January, 1894, there was issued out of the office of said justice of the peace, J. A. Lacey, a "summons" in said case; which said summons is in words and figures as follows, to wit :

Summons.

STATE OF KANSAS, }
Republic County, } ss :

The State of Kansas to A. P. Huddy, constable of Belleville city, in said county :

You are hereby commanded to summon the Chicago, Rock Island & Pacific Railway Company, a corporation, to appear before me,

the undersigned justice of the peace, at my office, in Belleville city, on the 22 day of January, 1894, at 10 o'clock a. m., to answer the action of E. H. Sturm for upon account for personal services rendered by said defendant for plaintiff, said account being due and unpaid in the sum of one hundred and forty dollars; and then and there return this writ.

Witness my hand, at Belleville, in said county, this 18th day of Jan., 1894.

J. A. LACEY,
Justice of the Peace.

(Endorsed :) "If the defendant fail to appear, the plaintiff will take judgment for \$140, with interest thereon, at the rate of — per cent. per annum, from —, 189—, and costs of suit. J. A. Lacey, justice of the peace. Filed this 22d day of January, 1894. J. A. Lacey, justice of the peace."

"Jan. 18, 1894.—Received this writ Jan. 18, 1894; served the same by delivering a copy thereof, with the endorsements thereon duly certified, to the within-named defendants, to I. A. Whittemore, station agent for the Rock Island Railway Co. at Belleville, Kansas. A. P. HODDY, *Constable.*"

Constable Fees.

Serving summons, first person.....	\$.25
Copy of summons.....	.15
Total.....	\$.40

A. P. HODDY, *Constable.*

"Filed March 12th, 1894.

A. ELLINGSON, *Clerk,*
By I. O. SAVAGE, *Deputy.*"

That thereafter, on the 22nd day of January, 1894, this cause came on for hearing before said justice of the peace, J. A. Lacey, and such proceedings were had therein as is shown by the following transcript:

STATE OF KANSAS, } ss:
Republic County,

Before J. A. Lacey, a justice of the peace of Belleville city, in said county.

E. H. STURM

vs.

THE CHICAGO, ROCK ISLAND AND PACIFIC
Railway Company, a Corporation, De-
fendant.

No. —. Civil Action.
Amount Claimed,
\$140.

January 18, 1894, the plaintiff filed his bill of particulars, bond, and affidavit, complaint asking judgment against the defendant in

the sum of \$140 and costs of suit; summons issued and dated Jan. 18, 1894, returnable Jan. 22nd, 1894, at 10 o'clock a. m.; summons returned and filed Jan. 20, 1894, at 10 o'clock a. m., with the following return endorsed thereon, to wit:

"Jan. 18, 1894.—Received this writ Jan. 18, 1894; served the same by leaving a copy thereof, with the endorsements thereon duly certified, to I. A. Whittemore, station agent at Belleville, Kansas, in the employ of said defendant.

A. P. HODDY, *Constable.*"

Constable Fees.

Serving summons, 1st person...	\$.25
One copy of summons.....	.15
Total.....	\$.40

A. P. HODDY, *Constable.*

"Jan. 22, 1894, case called for hearing; parties all being present, by their attorneys—V. D. Bullen for plaintiff and J. F. Close for defendant—when, on motion and at request of defendant, case continued 15 days, or to Feb. 5th, 1894, at 10 o'clock a. m.

J. A. LACEY,
Justice of the Peace.

11 And now, on this 5th day of Feb., 1894, comes the parties to this action—V. D. Bullen for plaintiff and W. E. Clark, att'y for defendant—when the case is taken up and evidence heard and authorities introduced and read; when, after having carefully considered same and having been duly advised in the premises, I do find for the plaintiff in the sum of one hundred and forty and no $\frac{1}{100}$ dollars and interest thereon, at the rate of 6 per cent., from Feb. 5th, 1894, and costs of suit herein, taxed at three and $\frac{1}{100}$ dollars.

J. A. LACEY,
Justice of the Peace.

It is therefore, on this 5th day of February, 1894, by me considered, ordered, and adjudged that the plaintiff, E. H. Sturm, have and recover of the defendant, The Chicago, Rock Island & Pacific Railway Company, a corporation, the sum of one hundred and forty and no $\frac{1}{100}$ dollars and interest, at 6% per annum, from Feb. 5th, 1894, and costs of suit herein, taxed at three and $\frac{1}{100}$ dollars.

J. A. LACEY,
Justice of the Peace."

Appeal bond approved and filed this 15th day of February, 1894.

J. A. LACEY,
Justice of the Peace.

Before J. A. Lacey, J. P., in and for Belleville city, Republic county,
Kansas.

E. H. STURM, Pl'ff,

vs.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, Def't. }

STATE OF KANSAS, }
Republic County, } ss.:

I do hereby certify that the costs in the above-entitled action is
as follows, to wit:

Original costs of justice of the peace.....	\$3.00
Constable costs.....	.40
Transcript, 10c. per folio.....	.40
Certificates.....	.50
	<hr/>
	\$4.30
Transmitting papers to dist. court.....	.35
	<hr/>
	\$4.65

In witness whereof I have hereunto set my hand this 18 day
of March, 1894.

J. A. LACEY,
Justice of the Peace.

STATE OF KANSAS, }
Republic County, } ss.:

I, the undersigned, a justice of the peace of Belleville city, in said
county, hereby certify that the within is a full, true, complete, and
perfect copy of the proceedings in the above action had by and be-
fore me, at my office, in said city, as the same appears of record on
my docket, page 66.

Witness my name, at Belleville, Kansas, in said county, this 12
day of March, 1894.

J. A. LACEY,
Justice of the Peace.

"Filed this 12th day of March, 1894. A. Ellingson, clerk of the
district court, by I. O. Savage, deputy."

12 That thereafter and on the 15th day of February, 1894, the
defendant filed in the office of said justice of the peace, J. A.
Lacey, an appeal bond in writing and in words and figures as follows,
to wit:

Before J. A. Lacey, a justice of the peace of Belleville city, in
Republic county, Kansas.

E. H. STURM, Plaintiff,

vs.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
Co., Defendant.

} Appeal Bond.

STATE OF KANSAS, } ss:
Republic County, }

Whereas the defendant, The Chicago, Rock Island & Pacific
Railway Company, a corporation, intends to appeal from a judg-
ment rendered against it in favor of the plaintiff, E. H. Sturm,
on the fifth day of February, 1894, by the undersigned justice of the
peace of Belleville city, in said county :

Now, we, the undersigned, residents of said county, bind ourselves
to said plaintiff in the sum of \$290 dollars that said defendant shall
prosecute its appeal to effect and without unnecessary delay and
satisfy such judgment and costs as may be rendered against it
therein.

C., R. I. & P. R'Y CO.,
Per J. F. CLOSE, *Its Att'y.*
J. M. DOHERTY.

Approved by me this fifteenth day of February, A. D. 1894.

J. A. LACEY,
Justice of the Peace.

Affidavit of Sureties.

STATE OF KANSAS, } ss:
Republic County, }

We, the undersigned, sureties on the within bond, do solemnly
swear that we are residents of said county and State, and that we
are each worth two hundred and ninety dollars over and above all
exemptions, debts, and liabilities, so help us God.

J. M. DOHERTY.

Subscribed in my presence and sworn to before me this 15th day
of February, A. D. 1894.

E. B. TOWLE,
Justice of the Peace.

" Filed this 15th day of Feb., 1894.

J. A. LACEY,
Justice of the Peace."

" Filed March 12th, 1894.

A. ELLINGSON, *Clerk,*
By I. O. SAVAGE, *Deputy."*

That thereafter and on the 12th day of March, A. D. 1894, said
justice of the peace, J. A. Lacey, before whom said cause was tried,
caused the above and foregoing transcript of proceedings had before

him, together with the bill of particulars, summons, and appeal bond, hereinbefore set out (the same being all the papers filed in said cause before said justice of the peace), to be transmitted to and filed in the office of the clerk of the district court of said Republic county, as is shown by the filing mark on each of the above and foregoing papers.

13 That thereupon the clerk of said court caused said case to be docketed for trial in the district court of Republic county, Kansas, and said case was continued, by consent, from term to term of said court until the October term, A. D. 1894, of said court.

And thereafter, on the 10th day of October, 1894, the defendant filed in the office of the clerk of said court a motion for continuance; which motion was in writing and in words and figures as follows, to wit:

In the District Court in and for Republic County, Kansas.

E. H. STURM, Plaintiff,

vs.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Defendant.

} Motion.

Now comes the above-named defendant, The Chicago, Rock Island and Pacific Railway Company, and moves the court to grant it a continuance of this cause until the next term of this court, for reasons which more fully appear in the annexed affidavit.

J. E. DOLMAN &

J. F. CLOSE,

Attorneys for Defendant.

STATE OF KANSAS, } ss:
County of Republic, }

J. E. Dolman, of lawful age, being fully sworn, deposes and says that he is agent and attorney for the above-named defendant, The Chicago, Rock Island and Pacific Railway Company, and as such makes, and is authorized to make, this affidavit.

Affiant states that on the 13th day of December, 1893, in the county of Pottawattamie and State of Iowa, one A. H. Willard, as plaintiff, commenced an action against E. H. Sturm, above-named plaintiff, in justice court, before Ovide Vien, a justice of the peace in and for said county and State, to recover the sum of \$78.63, with interest at the rate of ten per cent. per annum; and at the same time garnished the above-named defendant, The Chicago, Rock Island and Pacific Railway Company, by suing out a writ of attachment and garnishment from said court and having same duly served upon this defendant.

That at the time of the service of said garnishment summons upon said defendant it had in its possession and was indebted to said plaintiff, E. H. Sturm, in the sum of \$77.17, as wages earned during the months of November and December, 1893, being the same wages sought to be recovered by plaintiff from said defendant in this action.

That said defendant, The Chicago, Rock Island and Pacific Railway Company, as garnishee in the action pending before the said Ovide Vien, a justice of the peace in and for Pottawattamie county, Iowa, filed its answer in said court on the 16th day of December, 1893, admitting the indebtedness to the said E. H. Sturm, as aforesaid.

That at the time of the commencement of said action in said county of Pottawattamie, in the State of Iowa, the said E. H. Sturm, plaintiff in this action, was a non-resident of the State of Iowa; that service upon the said E. H. Sturm in said State of Iowa was duly had, by publication, according to laws of said State, and that afterwards, to wit, on the 20th day of February, 1894, in said justice's court, in said State of Iowa, judgment was rendered against

14 the said E. H. Sturm and against the said The Chicago, Rock Island and Pacific Railway Company, defendant herein, as garnishee, for the sum of \$76.16 and the costs of suit, amounting to \$19.00; that afterwards, to wit, on the 12th day of March, 1894, the said The Chicago, Rock Island and Pacific Railway Company, as garnishee, duly appealed from the said judgment of the said justice of the peace to the district court of Pottawattamie county, State of Iowa, and that said action is now pending undetermined in said court.

Affiant further says that the moneys sought to be recovered in this action are the same moneys sought to be recovered by said A. H. Willard in the district court of Pottawattamie county, Iowa, in said garnishment proceedings.

That under the laws of Iowa said justice's court and said district court acquired jurisdiction over said moneys, and that under the laws of the State of Iowa the said moneys of the said plaintiff were not, at the time of the said garnishment, exempt from attachment upon execution or garnishment.

Affiant further states that prior to and at the time of the rendering of said judgment in said justice's court in said county of Pottawattamie, State of Iowa, the said Ovide Vien was a duly qualified and elected and acting justice of the peace in and for said county and State.

Affiant further states that all of the proceedings had in Iowa were commenced prior to the commencement of this suit, and that if this case be continued until the next term of this court affiant believes that the action pending against it in Iowa for the recovery of these same moneys will have been determined and the rights of this defendant properly and equitably protected; that to compel this defendant to go to trial at this term of court would result in a multiplicity of suits and unjustly harass this defendant and subject it to great annoyance and unnecessary expense.

[SEAL.]

J. E. DOLMAN.

Subscribed and sworn to before me this 10th day of Oct., 1894.

A. ELLINGSON,
Clerk District Court.

Which motion for a continuance coming on to be heard before the court on said 10th day of October, 1894, the plaintiff appearing by V. D. Bullen, his attorney, and the defendant by J. E. Dolman, its attorney, after arguments of counsel and due consideration, was by the court overruled; to which ruling of the court the defendant at the time duly excepted.

And thereupon, on said 10th day of October, A. D. 1894, the defendant filed in the office of the clerk of said court its answer in said case, in writing; which said answer is in words and figures as follows, to wit:

In the District Court in and for Republic County, State of Kansas.

E. H. STURM, Plaintiff,

vs.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY Company, Defendant. } Answer.

Comes now the above-named defendant and, for answer to plaintiff's petition filed herein, denies all and singular the allegations thereof except such as are hereinafter expressly admitted.

I.

15 Defendant admits that it is a corporation duly organized under the laws of the State of Illinois and Iowa and doing business in the State of Kansas.

2.

Further answering, defendant states that on the 13th day of December, 1893, in the county of Pottawattamie, in the State of Iowa, one A. H. Willard, as plaintiff, commenced an action against E. H. Sturm, the above-named plaintiff, in justice's court, before Ovide Vien, a justice of the peace in and for said county and State, to recover the sum of \$78.63, with interest at the rate of ten per cent. per annum, and at the same time garnished the above-named defendant, The Chicago, Rock Island and Pacific Railway Company, by suing out a writ of attachment and garnishment from said court and having same duly served upon this defendant.

III.

Further answering, defendant states that at the time of the service of said garnishment summons upon said defendant it had in its possession and was indebted to said plaintiff, E. H. Sturm, in the sum of \$77.17, as wages earned during the months of November and December, 1893, being the same wages sought to be recovered by plaintiff from said defendant in this action, and that on the 16th day of December, 1893, it filed its answer in said justice's court admitting said indebtedness to said E. H. Sturm, as aforesaid.

IV.

Further answering, defendant states that at the time of the commencement of said action in said county of Pottawattamie, in the State of Iowa, said E. H. Sturm, plaintiff in this action, was a non-resident of the State of Iowa; that service upon said E. H. Sturm in said State of Iowa was duly had by publication according to the laws of said State; and that afterwards, to wit, on the 20th day of February, 1894, in said justice's court, in said State of Iowa, judgment was rendered against said E. H. Sturm and against said The Chicago, Rock Island and Pacific Railway Company, defendant herein, as garnishee, for the sum of \$76.16 and costs of suit, amounting to \$19.00; and that afterwards, to wit, on the 12th day of March, 1894, the Chicago, Rock Island and Pacific Railway Company, as garnishee, duly appealed from said judgment of said justice's court to the district court of said Pottawattamie county, State of Iowa, and that said action is now pending and undetermined in said district court.

V.

Further answering, defendant states that the moneys sought to be recovered in this action are the same moneys sought to be recovered by said A. H. Willard in the district court of said Pottawattamie county, Iowa, in said garnishment proceedings; that under the laws of Iowa said justice's court and said district court acquired jurisdiction over said moneys, and that under the laws of State of Iowa said moneys were not at the time of said garnishment proceedings exempt from attachment upon execution or garnishment.

VI.

Further answering, defendant states that prior to and at the time of the rendering of said judgment in said justice court in said county of Pottawattamie, in the State of Iowa, the said Ovide Vien was a duly qualified, elected, and acting justice of the peace
 16 in and for said county and State, and that all of the proceedings had in Iowa were commenced prior to the commencement of this suit. A certified copy and transcript of said proceedings is hereto attached, marked Exhibit "A," and made a part of this answer.

Having fully answered, this defendant asks to be discharged hence with its costs in this behalf laid out and expended.

J. E. DOLMAN &

J. F. CLOSE,

Attorneys for Defendant.

"Ex. A."

STATE OF IOWA, }
 Pottawattamie Co., } ss:

I, T. S. Campbell, clerk of the dist. court in and for said county, do hereby certify that at and prior to the date of rendering judgment in the case of A. H. Willard vs. E. H. Sturm & C., R. I. & P.

R'lway Co., garnishee, to wit, on the 20th day of Feb., 1894, Ovide Vien was a duly elected & qualified & acting justice of the peace in and for Pottawattamie Co., Iowa.

In witness whereof I have hereunto subscribed my name & affixed the seal of the dist. court, at my office, in Co. Bluffs, this 28th day of Sept., A. D. 1894.

T. S. CAMPBELL,
Clerk of Dist. Court.

STATE OF IOWA, }
County of Pottawattamie, } ss:

In the District Court in and for said Pottawattamie County.

A. H. WILLARD, Plaintiff,
against

E. H. STURM, Defendant; THE CHICAGO, ROCK ISLAND AND PA-
cific Railway Company, Garnishee. }

Be it remembered that heretofore, to wit, on the 26th day of April, 1894, there was filed in the office of the clerk of said district court a certified transcript of the docket entries made and entered in the above-entitled cause by Ovide Vien, a justice of the peace in and for said Pottawattamie county, accompanied by the original papers filed in said cause before said justice, all of which papers were duly filed in the office of said clerk, said cause having been appealed by the garnishee therein named to said district court from a judgment rendered by said justice against it, and said cause was thereupon by said clerk duly entered upon the appearance docket of said district court. Said entry upon said appearance docket is in words and figures following to wit:

A. H. WILLARD
vs.

E. H. STURM & C., R. I. & P. R'y Co., Garnishee.

} No. 9604. Appeal.

Wright & Baldwin, for garnishee.

Commenced for August term, 1894. April 26, 1894, transcript — filed from J. P. court of Ovide Vien filed. Filing petition P. P. by garnishee, \$1.50.

17 Said original papers filed with said transcript, as aforesaid, consist of a verified petition and affidavit for attorneys' fees, an attachment bond, a writ of attachment, an original notice, a notice of garnishment, answer of garnishee, notice of publication, affidavit and petition for alias writ of attachment, additional or alias writ and second notice of garnishment, and an appeal bond; said petition, attachment bond, and affidavit for attorneys' fee, together with all endorsements thereon, are in words and figures following, to wit:

In Justice's Court of Ovide Vien, J. P., in and for Pottawattamie County, State of Iowa.

A. H. WILLARD, Plaintiff,

E. H. STURM, Otherwise Known as E. H. Stern, Defendant.

} Petition for Attachment.

The plaintiff states as his cause of action that at Norcatur, Kansas, on the 25th day of Oct., 1889, the defendant made & delivered to one W. J. McKenne his promissory note, in writing, for \$78.63, with interest at 10 per cent. per annum from date, & due in sixty days from date. Said note provided for a reasonable att'ys' fee, provided suit should be brought to collect the same; that there has been paid upon said note the sum of \$20.00; that there is now due thereon the sum of \$70; that prior to the commencement of this action said note was duly assigned to plaintiff in writing and he is the owner thereof. A copy of said assignment is hereto annexed, marked "Ex. A," referred to and made a part hereof; that the def't is a non-resident of the State of Iowa. Wherefore pl'ff demands judgment against the def't for the sum of seventy dollars & 00 cents, with 10 per cent. interest from 15 day of Dec., 1893, besides costs, & also asks a writ of attachment against the goods and chattels, rights and credits, of the defendant.

A. H. WILLARD, Plaintiff.

STATE OF IOWA, }
Woodbury County, } ss:

I, J. W. Anderson, being duly sworn, deposes and says that *he is* att'y for the plaintiff in the above-entitled action; that I have read the foregoing petition, and that the claim, duly verified, upon which this action is based is in *his* possession, and affiant is in possession of other facts relative hereto, and the said petition and statements made therein are true, as *he* verily believes.

J. W. ANDERSON.

Sworn to before me and subscribed in my presence by the said J. W. Anderson this 12 day of Dec., 1893.

[SEAL.]

D. S. DUNKLE,
Notary Public.

Filed Dec. 13, 1893.

OVIDE VIEN,
Justice of the Peace.

A. H. WILLARD, Plaintiff, }
vs. }
E. H. STURM, Defendant. }

STATE OF IOWA, }
Woodbury County. }

J. W. Anderson upon oath says that he is the agent of plaintiff; that the defendant above named is not a resident of the State of

Iowa, and is not in said State, and personal service of the original notice or of any other notice issued herein cannot be served upon him in said State; that service can only be had by publication.

J. W. ANDERSON.

Subscribed and sworn to before me, by the said J. W. Anderson, this 12 day of Dec., 189—.

D. S. DUNKLE,
Notary Public. [SEAL.]

STATE OF IOWA, }
Pottawattamie County, } ss :

In Justice Court, before Ovide Vien, J. P., Kane Twp.

A. H. WILLARD, Plaintiff, }
vs. } Aff. for Att'ys' Fees.
E. H. STURM, Defendant. }

STATE OF IOWA, }
Woodbury County, } ss :

I, J. W. Anderson, being duly sworn, on oath state that I am the attorney engaged in the above-entitled action for the plaintiff; that I am a regular attorney and engaged in the practice of law in the State of Iowa; that there has been and is no agreement, express or implied, between this affiant and his client, or between this affiant and any other person, for any division or sharing of the fee to be taxed in this cause; that the fee to be taxed herein is in compensation for services actually rendered in this cause; that the amount of attorneys' fees are not less than \$7.00.

J. W. ANDERSON.

Sworn to and subscribed in my presence this 12th day of Dec., 1893.

D. S. DUNKLE,
Notary Public.

In Justice Court, Kane Township, Pottawattamie County, before O. Vien, J. P.

A. H. WILLARD, Plaintiff, }
vs. } Attachment Bond.
E. H. STURM, Defendant. }

Know all men by these presents that we, A. H. Willard & I. Webster, are held and firmly bound unto E. H. Sturm in the penal sum of three hundred dollars and no cents, lawful money of the United States; for the payment of which said sum, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this — day of —, 18—.

The condition of the above obligation is such that whereas the

above-bounden A. H. Willard sued out of the office of the undersigned, justice of the peace in and for Pottawattamie county, State of Iowa—has on the day of the date hereof sued out an attachment against the property of said E. H. Sturm :

Now, if the said A. H. Willard shall well and truly pay the said defendant all the damages that he may sustain by the wrongful suing out of said writ of attachment, then the above obligation to be void; otherwise to remain in full force and effect.

Dated at Sioux City, Iowa, this 12 day of December, 1893.

A. H. WILLARD.
I. WEBSTER.

19 STATE OF IOWA, }
 Pottawattamie County, } ss :

I, I. Webster, do solemnly swear that I am worth double the amount of the within bond over and above all my liabilities, & I am a resident of the State of Iowa, & have property in said State liable to execution equal to the sum of three hundred dollars.

I. WEBSTER.

Subscribed in my presence and sworn to before me by the said I. Webster this 30th day of Aug., 1893.

[SEAL.]

D. S. DUNKLE,
Notary Public.

"Approved and filed this Dec. 13, 1893.

OVIDE VIEN,
Justice of the Peace."

Said writ of attachment and original notice, with all endorsements thereon, are in words and figures following, to wit :

STATE OF IOWA, }
Pottawattamie County, } ss :

To the sheriff or any constable of said county, Greeting :

Whereas A. H. Willard has filed his petition under oath, among other things, stating that defendant E. H. Sturm is justly indebted to him in the sum of seventy dollars, and that said amount is due him thereon, and stating, further, that said defendant is not a resident of the State of Iowa, and asking that a writ of attachment may issue against the goods and chattels, property and effects, of said defendant, or so much thereof as may be necessary to secure the plaintiff's claim, and that said A. H. Willard having filed in my office his bond, which bond has been approved by me, condition—that the said plaintiff will pay all damages which the said defendant may sustain by reason of the wrongful suing out of said writ of attachment :

Therefore, in the name of the State of Iowa, you are hereby commanded to attach the goods and chattels, property and effects, of the said defendant, E. H. Sturm, wherever the same may be found in your county, or so much thereof as may be necessary to satisfy the

above indebtedness, together with interest and costs of suit, and safely preserve the same, to be dealt with according to law, and make legal return of this writ to me, at my office, in Council Bluffs, on the 20 day of Dec., 1893, at 10 o'clock a. m.

In witness whereof I, Ovide Vien, justice of the peace, have hereunto subscribed my name, at my office, in Council Bluffs, this 13 day of Dec., A. D. 1893.

OVIDE VIEN,
Justice of the Peace.

STATE OF IOWA, }
Pottawattamie County, } ss:

I, J. C. Baker, constable of Co. Bluffs, Ia., hereby certify and return that I received the within writ for service on the 13th day of December, 1893, and by virtue thereof, on December 13, 1893, I attached as garnishee the Chicago, Rock Island R'y Co. by informing A. T. Elwell, he being the agent thereof, at his office, in Council Bluffs, Ia., that said R'y Co. is attached as garnishee, and by leaving with him a written notice, a copy of which is hereto attached, marked Exhibit "A," and made a part thereof. I made a diligent search and inquiry for the within-named defendant, and I could not find him in said county, and I now return this writ and notice with my doings herein.

J. C. BAKER, *Constable.*

Service of writ.....	\$.50
Mileage .....	.10
Serving writ of garnishee.....	.50
Mileage .....	.10
Copy.....	.10
Advance fees p'd by J. C. Baker.....	.60
	<hr/>
	\$1.90

STATE OF IOWA, }
Pottawattamie County, } ss:

Justice Court.

A. H. WILLARD, Pl'ff, }
vs. } Original Notice.
E. H. STURM, Def't.

To said def't:

You are hereby notified that the pl'ff above named claims of you seventy dollars and — cents as justly due from you to him upon assigned note as described in petition, and that unless you appear at the office of Ovide Vien, a justice of the peace of Kane township, of said county and State, at 10 o'clock forenoon, on the 20 day of Dec., 1893, and make defense against said claim, judgment will be rendered against you for the whole amount, with interest, costs, and attorney fees.

Dated at Sioux Cy. this 13 day of Dec., 1893.

OVIDE VIEN,
Justice of the Peace.

Said notice of garnishment is in words and figures following, to wit:

In Justice Court, before Ovide Vien, Justice of the Peace in and for Kane Township, Pottawattamie Co., Iowa.

A. H. WILLARD }
against
 E. H. STURM. }

To Chicago, Rock Island and Pacific R'y Co.:

You will take notice that you are hereby attached as garnishee in the above-entitled action, and are hereby further notified and required not to pay any debt due by you to the above-named defendant, or hereafter to become due, and that you must retain possession of all property of the said defendant now or hereafter being in your custody or under your control, in order that the same may be dealt with according to law.

And you are hereby further required to be and appear before the said Ovide Vien, Esq., a justice of the peace within and for Pottawattamie county, Iowa, at his office, in Council Bluffs, Iowa, in
 21 said county, on the 20 day of Dec., 1893, at 9 o'clock in the forenoon of that day, and make answer and disclosure according to law of any and all money due and to become due from you to the said defendant, and of all property under your control belonging to said defendant, or you will be liable to pay the entire judgment which the plaintiff may eventually obtain against the defendant.

Dated at Council Bluffs, Iowa, Dec. 13, 1893.

J. C. BAKER, *Constable.*

Remarks.

Defendant's occupation: Round-house.

Where employed: Belleville, Kas.

Amount of claim.....	\$70.00
Costs to date.....	7.00
Att'ys' fees.....	7.00
	<hr/>
	\$84.00

From whom purchased: W. J. McKenna.

Nature of claim: Note.

GEO. T. WEBSTER,
Attorney for Plaintiff, Sioux City, Iowa.

Said answer of garnishee is in words and figures, to wit:

STATE OF IOWA, }
 County of Pottawattamie, } ss:

Before Ovide Vien, justice of the peace in and for — township,
 Pottawattamie county, Iowa.

A. H. WILLARD, Plaintiff,
 vs.
 E. H. STURM, Defendant, and THE CHI- } Answer of Garnishee.
 cago, Rock Island and Pacific Railway }
 Company, Garnishee.

Comes now The Chicago, Rock Island and Pacific Railway Company, garnishee herein, and for answer says:

It is indebted to the defendant, E. H. Sturm, in this suit in the sum of \$77.17 as wages earned during November and December, 1893.

It has not in its possession or under its control any other property, rights, and credits of the said defendant.

It knows of no other debts owing to the said defendant, and of no other property, rights, or credits belonging to him and now in the possession or under the control of others.

THE CHICAGO, ROCK ISLAND AND
 PACIFIC RAILWAY COMPANY,
 By H. PATTERSON.

STATE OF ILLINOIS, }
 County of Cook, } ss:

I, J. F. Phillips, being first duly sworn, depose and say that I am ass't treasurer of the Chicago, Rock Island and Pacific Railway Company; that I have heard the foregoing answer read and know the contents thereof, and the statements therein made are true, as I verily believe.

J. F. PHILLIPS.

22 Subscribed and sworn to by J. T. Phillips before me and in my presence this 16th day of December, A. D. 1893.

[SEAL.]

CHARLES T. SCHWARTZ,
 Notary Public, Cook County, Ill.

Said notice of publication, together with all endorsements thereon, is in words and figures following, to wit:

Notice by Publication.

To E. H. Sturm.

SIR: You are hereby notified that there is now pending before Ovide Vien, a justice of the peace in and for Pottawattamie county, Iowa, a suit in which A. H. Willard claims of you seventy dollars and — cents as justly due on account of your promissory note, & att'y fees; that in said cause a writ of attachment has been issued and the following property taken by virtue thereof, to wit, Chicago, Rock Island & Pacific R'y Co. has been garnished; that upon the return

of the original notice it was found you were absent, so that personal service could not be made, and an order was made by said justice fixing the day for trial on the 20th day of Feb'y, 1894, at 9 o'clock a. m., and requiring notice thereof to be given by publication, and that unless you appear and answer thereto at the time so fixed for trial, default will be taken and judgment rendered for the full amount claimed, and awarding execution against the property attached.

Dated at Council Bluffs, in said county, this 20 day of Dec., A. D 1893.

J. C. BAKER,
Constable, Potta. County.

This within notice came into my hands on the 20 day of Dec., 1893. I served the same by posting up three true copies in three public places, one of which was at the door of the J. P. of which this case is pending.

All done in Kane township, Potta. Co., Ia.
60 cents.

J. C. BAKER, *Constable.*

Said petition and affidavit for an alias writ of attachment and said alias writ of attachment, with all endorsements thereon, and said second notice to garnishee are in words and figures following, to wit:

STATE OF IOWA, }
Pottawattamie County, } ss :

In Justice Court, before Ovide Vien, J. P.

A. H. WILLARD, Plaintiff, }
vs.
E. H. STURM, Defendant. }

STATE OF IOWA, }
Pottawattamie County, } ss :

D. S. Dunkle, being duly sworn, upon oath says that he is the agent for the plaintiff; that this action is by attachment, and a writ of attachment has been issued herein and duly served and
23 returned, but the property attached is not sufficient to satisfy plaintiff's claim and the costs, and another writ of attachment must be issued. Wherefore affiant prays on behalf of and for the benefit of said plaintiff that another writ will be issued herein, and that the same be duly served.

D. S. DUNKLE.

Subscribed and sworn to before me by the said D. S. Dunkle, this 11th day of January, 1894.

J. W. ANDERSON,
Notary Public.

[SEAL.]

Before Ovide Vien, justice of the peace for Kane township, Pottawattamie county, Iowa.

A. H. WILLARD, Plaintiff, }
 vs. } Alias Writ of Attachment.
 E. H. STURM, Defendant. }

STATE OF IOWA, }
 Pottawattamie County, } ss :

To the sheriff or any constable of said county, Greeting :

Whereas the plaintiff in the above-entitled action has filed his petition under oath in the office of Ovide Vien, a justice of the peace in and for said county and State aforesaid, stating that the defendant is justly indebted to the plaintiff in the sum of \$70.00 and, as plaintiff verily believes, the said defendant is a non-resident of the State of Iowa, and asking that an alias writ of attachment may issue against the goods and chattels, property and effects, of said defendant, or so much thereof as may be necessary to secure the plaintiff's claim, and the said plaintiff having filed in my office — bond to the sum of — dollars, conditioned that the said plaintiff will pay all damages which the said defendant may sustain by reason of the wrongful suing out of said writ of attachment :

Therefore, in the name of the State of Iowa, you are hereby commanded to attach the goods and chattels, property and effects, of the said defendant wherever the same may be found in your county, or so much thereof as may be necessary to satisfy the above indebtedness, together with interest and costs of suit, and safely preserve the same to be dealt with according to law, and made legal return of this writ to me at my office, in Council Bluffs, on the 20 day of Jan., 1894, at 10 o'clock a. m.

In witness whereof I, Ovide Vein, justice of the peace, have hereunto subscribed my name, at my office, in Council Bluffs, this 15 day of Jan., A. D. 1894.

OVIDE VEIN,
Justice of the Peace.

STATE OF IOWA, }
 Pottawattamie County, } ss :

I, J. C. Baker, constable of Kane township, of said county, hereby certify and return that I received the within writ for service on the 15th day of January, 1894, and by virtue thereof, on the 15th Jan., 1894, I attached as garnishee The Chicago, Rock Island & Pacific Railway Company by informing W. J. Davenport, superintendent or general agent or manager thereof, at his office, in Co. Bluffs, Iowa, that said R'y Co. is attached as garnishee, and by handing to and leaving with him a written notice, a copy of which is hereto attached, marked Exhibit "A," and made a part thereof; he waived the reading of the same; that I made diligent search and inquiry for the within-named defendant and could not find him in said county, and I now return this writ and notice with my doings herein.

Service of writ.....	\$.50
Mileage....	.10
Service of notice of garnishment.....	.50
Mileage.....	.10
Copies.....	.10
Paid to garnishee defendant.....	.60

By attaching as garnishee by Baker..... \$1.90

J. C. BAKER, *Constable.*

"The within notice came into my hands on the 15 day of Jan., 1894, and I duly served the same by attaching the following-described property of the within named by attaching as garnishee, as shown by garnishee notice attached hereto.

Done in Kane township, Pottawattamie county, Iowa.

Service.....	\$.50
Mileage.....	.10
Levy.....	.50
Execution ...	.60

\$1.70

J. C. BAKER,

Constable of Kane Township."

In Justice's Court, before Ovide Vein, Esq., Justice of the Peace in and for Kane Township, Potta. Co., Iowa.

A. H. WILLARD }
against
 E. H. STURM. }

To the Chicago, Rock Island & Pacific Railway Company :

You will take notice that you are hereby attached as garnishee in in the above-entitled action, and are hereby notified and required not to pay any debt due by you to the above-named defendant, or hereafter to become due, and that you must retain possession of all property of the said defendant now or hereafter being in your custody or under your control, in order that the same may be dealt with according to law.

And you are hereby further required to be and appear before the said Ovide Vien, Esq., a justice of the peace within and for Woodbury county, Iowa, at his office, in Co. Bluffs, Iowa, in said county, on the 20 day of January, 1894, at 9 o'clock in the forenoon of that day, and make answer and disclosure, according to law, of any and all money due and to become due from you to the said defendant, and of all property under your control belonging to said defendant, or you will be liable to pay the entire judgment which the plaintiff may eventually obtain against the defendant.

Dated at Co. Bluffs, Iowa, — 15, 1894.

J. C. BAKER,

Special Constable.

25

Remarks.

Defendant's occupation: —.

Where employed, Round-house: Belleville, Kansas.

From whom purchased: — —.

Nature of claim: —.

Amount of claim: —.

Costs to date: —.

Will accept in full of claim and costs: —.

D. S. DUNKLE,
Agent for Plaintiff.

Said appeal bond is in words and figures following, to wit:

In Justice's Court, before O. Vien, Esq.

A. H. WILLARD
*against*E. H. STURM and CHICAGO, ROCK ISLAND AND } Appeal Bond.
Pacific Railway Co., Gar.

The undersigned acknowledge ourselves indebted to A. H. Willard in the sum of three hundred dollars upon the following conditions:

Whereas Chicago, Rock Island — Pacific R'way Co. has appealed from the judgment of Ovide Vien, a justice of the peace, in an action between A. H. Willard, as plaintiff, and E. H. Sturm, as defendant, & Chicago, Rock Island and Pacific Railway Co., garnishee:

Now, if said appealant pays whatever amount is legally adjudged against him in the further progress of this cause, then this bond to be void.

CHICAGO, ROCK ISLAND & PACIFIC
RAILWAY CO.,

By WRIGHT & BALDWIN,

*Its Att'ys, Principal.*W. H. HENRY, *Surety.*

Approved:

OVIDE VIEN,

*Justice of the Peace.*STATE OF IOWA, }
Pottawattamie County, } ss:

H. L. Henry, being duly sworn, says that he is a resident of Pottawattamie county, State of Iowa; that he is worth the sum of nine hundred dollars over and above his debts and liabilities, and has property of the value of nine hundred dollars not exempt from execution.

H. L. HENRY, *Surety.*

Subscribed and sworn to by W. H. Henry, before me and in my presence, this 12 day of March, 1894.

[SEAL.]

GEO. S. WRIGHT,
Notary Public.

Said transcript of the docket entries of said justice of the peace is in words and figures following, to wit :

Before Ovide Vien, justice of the peace, Kane township, Pottawat-
tanie county.

A. H. WILLARD }
vs.
E. H. STURM. }

Be it remembered that on the 13 day of Dec., A. D. 1893, one A. H. Willard filed his petition, under oath, in my office, demand-
26 ing of the defendant the sum of seventy & no ¹⁰⁰ dollars, & att'ys' fees, due on a note, and asking a writ of attachment against the goods and chattels, rights and credits, of the defendant, and on the same day filed his attachment bond in the sum of \$300, with I. Webster as sureties, and on the same day I approved said bond and issued said writ of attachment, returnable on the 20 day of December, A. D. 1893, at 10 o'clock a. m., and an original notice, returnable on the same day and at the same hour, and placed both writ and said original notice in the hands of Constable J. C. Baker for service, who, on the 13 day of Dec., A. D. 1893, made a due and legal return that he had served said writ of attachment by attaching as garnishee The Chicago, Rock Island and Pacific R'y Co. and citing it to appear and make answer on the 20 day of Dec., 1893, at 10 o'clock a. m. Original notice returned not served, the defendant not found in the county.

On this 18 day of Dec., 1893, garnishee defendant answers that it is indebted to the defendant in the sum of \$77.17. On motion of plaintiff, this cause is continued until the 20 day of Feb'y, 1894, at 9 o'clock a. m., and it being shown that the defendant is a non-resident of the State of Iowa, it is ordered by the court that notice of the pending of this action be given the defendant by publication. On this 15 day of Jan., 1894, plaintiff ask- for an alias writ of attachment, and on the same day I issued said alias writ of attachment, made returnable on the 20 day of Jan., 1894, at 10 o'clock a. m., and placed said alias writ of attachment in the hands of Constable J. C. Baker for service, who, on the 15 day of Jan., 1894, made due and legal return that he had served said alias writ of attachment by attaching as garnishee The Chicago, Rock Island and Pacific Railway Co. and citing it to appear and make answer on the 20 day of Jan., 1894, at 10 o'clock a. m.

At time set for hearing plaintiff appears, by attorney, defendant fails to appear, and after due time is declared in default; the evidence is taken and the court finds due plaintiff the sum of \$76.16 and the costs of this action, taxed at \$19.00. It is therefore ordered and adjudged that the plaintiff have and recover of and from the garnishee, The Chicago, Rock Island & Pacific R'y Co., the sum of \$95.17, and that said amount be condemned out of the moneys answered herein and paid into the court and applied upon this judgment, and that — default of such payment that execution issue against said garnishee.

OVIDE VIEN, J. P.

Justice Fees.

On motion.....	\$.50
Docket.....	.50
Bond.....	.50
Writ.....	.25
Petition.....	.50
Ans. of gar.....	.50
Cont.....	.50
Attachment.....	.25

Constable Fees.

Serv. notice.....	\$.50
Copies.....	.10
Mileage.....	.10
Serv. writ.....	.10
Garnishee fees.....	.60
Not. publ.....	.60
Serv. alias writ.....	1.10
Notice.....	.50
Copies.....	.10
27 Mileage.....	.10
Gar. fees.....	.60

STATE OF IOWA, }
 Pottawattamie County, } ss :

I do hereby certify that the above is a true copy of the original record and entries in my docket in the action in which such entries are entitled; that I have compared such copy with such original and the same is a correct transcript therefrom and of the whole of such original.

Witness my hand this 2 day of April, 1894.

OVIDE VIEN,
Justice — Peace.

STATE OF IOWA, }
 Pottawattamie County, } ss :

I, T. S. Campbell, clerk of the district court within and for the county and State aforesaid, hereby certify that the above and foregoing is a true and complete copy of the proceedings, papers, & transcript filed in the above-entitled cause, as the same remains of record and on file in this office.

In witness whereof I have hereunto set my hand and affixed the seal of said court on the 3 day of May, A. D. 1894.

[SEAL.]

T. S. CAMPBELL,
Clerk of the District Court.

STATE OF IOWA, ss :

I, the undersigned, one of the judges of the district court of the State of Iowa in and for the fifteenth judicial district, do hereby certify that T. S. Campbell, whose genuine signature is attached to

the foregoing certificate, was at the time of so signing said certificate clerk of the district court of Iowa in and for the county of Pottawattamie, having by law the custody of the records and seal of said court; that to his acts as such clerk full faith and credit are due and ought to be given, and that said certificate is in due form of law.

Witness my hand officially this the 3 day of May, A. D. 1894.

WALTER I. SMITH,

Judge District Court, Fifteenth Judicial District of Iowa.

STATE OF IOWA, }
Pottawattamie County, } ss :

I, the undersigned, clerk of the district court within and for the county and State aforesaid, do certify that the Hon. Walter I. Smith, whose signature appears on the foregoing certificate, was at the date of said certificate one of the judges of said district court within and for the fifteenth judicial district of Iowa; that I am well acquainted with his handwriting, and that the signature to the foregoing is his genuine signature.

In testimony whereof I hereunto set my hand and caused to be affixed the seal of said court, at Council Bluffs, this the 3 day of May, A. D. 1894.

T. S. CAMPBELL,

Clerk of District Court.

[SEAL.]

Filed Oct. 10, 1894.

A. ELLINGSON,

Clerk Dist. Court.

28 That thereafter and on the 12th day of October, 1894, there was filed in the office of the clerk of said court a reply, which was and is in words and figures as follows :

In the District Court of Republic County, Kansas.

E. H. STURM, Plaintiff,

vs.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Defendant.

} Reply.

Comes now the plaintiff and, in reply to defendant's answer, alleges that the amount due plaintiff from defendant was wages due for services rendered within the three months next prior to the commencement of this action; that the plaintiff is a resident head of a family, and that such wages is exempt under the laws of our State and not subject to garnishment proceedings; that the defendant well knew that these facts existed; that the court in Iowa had no jurisdiction of the property or person of the plaintiff.

V. D. BULLEN, Plaintiff's Att'y.

Filed Oct. 12, 1894.

A. ELLINGSON,

Clerk Dist. Court.

And thereafter and on the 23rd day of October, 1894, the same being one of the regular days of the October term, 1894, of the district court of Republic county, Kansas, this case came on for trial, the plaintiff appearing by V. D. Bullen, his attorney, and the defendants appearing by J. E. Dolman, its attorney.

And thereupon, on said day and in open court, by consent of counsel for the plaintiff and defendant, a jury was waived and this case was submitted to the court for hearing and determination.

And thereupon the plaintiff, to support and maintain the issues on his part, introduced the following evidence in the following order:

29 E. H. STURM, the plaintiff, being first duly and legally sworn, testified as follows:

Examined by Mr. V. D. BULLEN:

Q. Mr. Sturm, tell us your full name.

A. E. H. Sturm.

Q. Where do you reside?

A. Belleville, Kansas.

Q. What was your occupation during the months of November, December, and January?

A. I was hostler at the Rock Island round-house.

Q. You were in the employ of whom?

A. Was employed by the Rock Island Company.

Q. By whom were you employed?

Mr. DOLMAN: We don't question the authority of the person employing him.

Mr. BULLEN: Are you the head of a family?

A. Yes, sir.

Q. You have a family depending on you for support?

A. Yes, sir.

Q. Have you any other means of support than your daily labor?

A. No, sir.

Cross-examination by Mr. J. E. DOLMAN:

Q. When were you first notified of the garnishment—in Iowa?

A. It was in December, 1893.

Q. Did you get another notice of garnishment of your wages, and when was that?

A. That was the day I went on the pay-car to draw my pay.

Q. When was that?

A. In January.

Q. Did you employ anybody to look after your case over in Iowa?

A. Yes, sir.

Q. Who was it?

A. Mr. Cooper.

Q. Who was Mr. Cooper?

A. He is a lawyer that lives in Fairbury.

Q. Did Mr. Cooper go over to Council Bluffs to appear for you there?

A. Yes, sir.

Q. Did he make a defense for you over there in justice court of Pottawattamie county?

A. No; I think not.

Q. You employed him to look after your matters there, and afterwards employed Mr. Bullen?

A. Yes, sir.

Q. That was before this suit was commenced by you in the justice court?

A. Yes, sir.

It is here admitted by the attorney for the defendant in this suit that at the time of the service of the second garnishment summons upon the defendant in the action pending in Iowa it was indebted to the plaintiff in the sum of \$110.00.

And thereupon the plaintiff rested his case.

30 And thereupon, the plaintiff having rested, the defendant, to support and maintain the issues on its part, introduced its evidence in the following order:

MR. DOLMAN: We offer in evidence the certificate of the clerk of the district court that the justice of the peace, Ovide Vien, was a duly elected, qualified, and acting justice of the peace of Pottawattamie county and State of Iowa at the time of rendering a judgment in that court in the case wherein A. H. Willard was plaintiff and this plaintiff, E. H. Sturm, was defendant and The Chicago, Rock Island and Pacific Railway Company was garnishee; also a certified transcript of proceedings had in said justice court, wherein A. H. Willard was plaintiff and this plaintiff was defendant and The Chicago, Rock Island and Pacific Railway Company was garnishee.

MR. BULLEN: We object to this for the reason it is not properly authenticated.

THE COURT: Overruled.

To which ruling of the court the plaintiff at the time duly excepted.

Said certificate and transcript was and is in words and figures as follows:

"Ex. A."

STATE OF IOWA, }
Pottawattamie Co., } 88:

I, T. S. Campbell, clerk of the dist. court in and for said county, do hereby certify that at and prior to the date of rendering judgment in the case of A. H. Willard & C., R. I. & P. R'lway Co., garnishee, to wit, on the 20th day of Feb., 1894, Ovide Vien was a duly elected & qualified & acting justice of the peace in and for Pottawattamie Co., Iowa.

In witness whereof I have hereunto subscribed my name &

affixed the seal of the dist. court, at my office, in Co. Bluffs, this 28 day of Sept., A. D. 1894.

T. S. CAMPBELL,
Clerk Dist. Court.

STATE OF IOWA, }
County of Pottawattamie, } ss:

In the District Court in and for said Pottawattamie County.

A. H. WILLARD, Plaintiff,

vs.

E. H. STURM, Defendant; THE CHICAGO, ROCK ISLAND AND }
Pacific Railway Company, Garnishee. }

Be it remembered that heretofore, to wit, on the 26th day of April, 1894, there was filed in the office of the clerk of said district court a certified transcript of the docket entries as made and entered in the above-entitled cause by Ovide Vien, a justice of the peace in and for said Pottawattamie county, accompanied by the original papers filed in said cause before said justice, all of which papers were duly filed in the office of said clerk, said cause having been appealed by the garnishee therein named to said district court from a judgment rendered by said justice against it, and said 31 cause was thereupon by said clerk duly entered upon the appearance docket of said district court. Said entry upon said appearance docket is in words and figures following, to wit:

A. H. WILLARD

vs.

E. H. STURM & C., R. I. & P. R'y Co., Gar- } No. 9604. Appeal.
nishee. }

Wright & Baldwin, for garnishee.

Commenced for August term, 1894. April 26, 1894, transcript — filed from J. P. court of Ovide Vien filed. Filing petition P. P. by garnishee, \$1.50.

Said original papers filed with said transcript, as aforesaid, consist of a verified petition and affidavit for attorneys' fees, an attachment bond, a writ of attachment, an original notice, a notice of garnishment, answer of garnishee, notice of publication, affidavit and petition for alias writ of attachment, additional or alias writ and second notice of garnishment, and an appeal bond; said petition, attachment bond, and affidavit for attorneys' fee, together with all endorsements thereon, are in words and figures following, to wit:

In Justice Court of Ovide Vien, J. P., in and for Pottawattamie County, State of Iowa.

<p>A. H. WILLARD, Plaintiff, <i>vs.</i> E. H. STURM, Otherwise Known as E. H. Stern, Defendant.</p>	}	<p>Petition for Attachment.</p>
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The plaintiff states as his cause of action that at Norcatur, Kansas, on the 25th day of Oct., 1889, the defendant made & delivered to one W. J. McKenna his promissory note, in writing, for \$78.63, with interest at 10 per cent. per annum from date, & due in sixty days from date. Said note provided for a reasonable att'ys' fee, provided suit should be brought to collect the same; that there has been paid upon said note the sum of \$20.00; that there is now due thereon the sum of \$70; that prior to the commencement of this action said note was duly assigned to plaintiff in writing and he is the owner thereof; a copy of said assignment is hereto annexed, marked "Ex. A," referred to and made a part hereof; that the def't is a non-resident of the State of Iowa. Wherefore pl'ff demands judgment against the def't for the sum of seventy dollars & $\frac{9}{10}$ cents, with 10 per cent. interest from 15 day of Dec., 1893, besides costs, & also asks a writ of attachment against the goods and chattels, rights and credits, of the defendant.

A. H. WILLARD, *Plaintiff.*

STATE OF IOWA, }
 Woodbury County, } *ss.*

I, J. W. Anderson, being duly sworn, deposes and says that *he is* att'y for the plaintiff in the above-entitled action; that I have read the foregoing petition, and that the claim, duly verified, upon which this action is based is in *his* possession, and affiant is in possession of other facts relative hereto, and the said petition and statements made therein are true, as *he* verily believes.

J. W. ANDERSON.

Sworn to before me and subscribed in my presence by the said J. W. Anderson this 12 day of Dec., 1893.

[SEAL.]

D. S. DUNKLE,
Notary Public.

Filed Dec. 13, 1893.

OVIDE VIEN,
Justice of the Peace.

32

<p>A. H. WILLARD, Plaintiff, <i>vs.</i> E. H. STURM, Defendant.</p>	}
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STATE OF IOWA, }
 Woodbury County, }

J. W. Anderson upon oath says that he is the agent of plaintiff; that the defendant above named is not a resident of the State o

Iowa, and is not in said State, and personal service of the original notice or of any other notice issued herein cannot be served upon him in said State; that service can only be had by publication.

J. W. ANDERSON.

Subscribed and sworn to before me by the said J. W. Anderson this 12 day of Dec., 189-.

D. S. DUNKLE,
Notary Public. [SEAL.]

STATE OF IOWA, }
Pottawattamie County, } ss:

In Justice Court, before Ovide Vien, J. P., Kane Twp.

A. H. WILLARD, Plaintiff, }
vs. } Aff. for Att'ys' Fees.
E. H. STURM, Defendant. }

STATE OF IOWA, }
Woodbury County, } ss:

I, J. W. Anderson, being duly sworn, on oath state that I am the attorney engaged in the above-entitled action for the plaintiff; that I am a regular attorney and engaged in the practice of law in the State of Iowa; that there has been and is no agreement, express or implied, between this affiant and his client, or between this affiant and any other person, for any division or sharing of the fee to be taxed in this cause; that the fee to be taxed herein is in compensation for services actually rendered in this cause; that the amount of attorneys' fees are not less than \$7.00.

J. W. ANDERSON.

Sworn to and subscribed in my presence this 12th day of Dec., 1893.

D. S. DUNKLE,
Notary Public.

In Justice Court, Kane Township, Pottawattamie County, before
O. Vien, J. P.

A. H. WILLARD, Plaintiff, }
vs. } Attachment Bond.
E. H. STURM, Defendant. }

Know all men by these presents that we, A. H. Willard & I. Webster, are held and firmly bound unto E. H. Sturm in the penal sum of three hundred dollars and no cents, lawful money of the United States; for the payment of which said sum, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seal- and dated this — day of —, 18—.

The condition of the above obligation is such that whereas the above-bounden A. H. Willard sued out of the office of the

undersigned, justice of the peace in and for Pottawattamie county, State of Iowa—has on the day of the date hereof sued out an attachment against the property of said E. H. Sturm :

Now, if the said A. H. Willard shall well and truly pay the said defendant all the damages that he may sustain by the wrongful suing out of said writ of attachment, then the above obligation to be void; otherwise to remain in full force and effect.

Dated at Sioux City, Iowa, this 12 day of December, 1893.

A. H. WILLARD.
I. WEBSTER.

STATE OF IOWA, }
Pottawattamie County, } ss :

I, I. Webster, do solemnly swear that I am worth double the amount of the within bond over and above all my liabilities, & I am a resident of the State of Iowa, & have property in said State liable to execution equal to the sum of three hundred dollars.

I. WEBSTER.

Subscribed in my presence and sworn to before me by the said I. Webster this 30 day of Aug., 1893.

[SEAL.]

D. S. DUNKLE,
Notary Public.

"Approved and filed this Dec. 13, 1893.

OVIDE VIEN,
Justice of the Peace."

Said writ of attachment and original notice, with all endorsements thereon, are in words and figures following, to wit :

STATE OF IOWA, }
Pottawattamie County, } ss :

To the sheriff or any constable of said county, Greeting :

Whereas A. H. Willard has filed his petition under oath, among other things, stating that defendant E. H. Sturm is justly indebted to him in the sum of seventy dollars, and that said amount is due him thereon, and stating, further, that said defendant is not a resident of the State of Iowa, and asking that a writ of attachment may issue against the goods and chattels, property and effects, of said defendant, or so much thereof as may be necessary to secure the plaintiff's claim, and the said A. H. Willard having filed in my office his bond, which bond has been approved by me, conditioned that the said plaintiff will pay all damages which the said defendant may sustain by reason of the wrongful suing out of said writ of attachment :

Therefore, in the name of the State of Iowa, you are hereby commanded to attach the goods and chattels, property and effects, of the said defendant, E. H. Sturm, wherever the same may be found in your county, or so much thereof as may be necessary to satisfy the above indebtedness, together with interest and costs of suit, and safely preserve the same, to be dealt with according to law, and make

legal return of this writ to me, at my office, in Council Bluffs, on the 20 day of Dec., 1893, at 10 o'clock a. m.

In witness whereof I, Ovide Vien, justice of the peace, have hereunto subscribed my name, at my office, in Council Bluffs, this 13 day of Dec., A. D. 1893.

OVIDE VIEN,
Justice of the Peace.

STATE OF IOWA, }
Pottawattamie County, } ss:

I, J. C. Baker, constable of Co. Bluffs, Ia., hereby certify and return that I received the within writ for service on the 13th day of December, 1893, and by virtue thereof, on December 13, 1893, I attached as garnishee the Chicago, Rock Island R'y Co. by informing A. T. Elwell, he being the agent thereof, at his office, in Council Bluffs, Ia., that said R'y Co. is attached as garnishee, and by leaving with him a written notice, a copy of which is hereto attached, marked Exhibit "A," and made a part hereof. I made a diligent search and inquiry for the within-named defendant, and I could not find him in said county, and I now return this writ and notice with my doings herein.

J. C. BAKER, *Constable.*

Service of writ.....	\$.50
Mileage .....	.10
Serving writ of garnishment .....	.50
Mileage .....	.10
Copy. ....	.10
Advance fees p'd by J. C. Baker.....	.60

\$1.90

STATE OF IOWA, }
Pottawattamie County, } ss:

Justice Court.

A. H. WILLARD, Pl'ff, }
vs. } Original Notice.
E. H. STURM, Def't. }

To said def't:

You are hereby notified that the pl'ff above named claims of you seventy dollars and — cents as justly due from you to him upon assigned note as described in petition, and that unless you appear at the office of Ovide Vien, a justice of the peace of Kane township, of said county and State, at 10 o'clock forenoon, on the 20 day of Dec., 1893, and make defense against said claim, judgment will be rendered against you for the whole amount, with interest, costs, and attorneys' fees.

Dated at Sioux City this 13 day of Dec., 1893.

OVIDE VIEN,
Justice of the Peace.

Said notice of garnishment is in words and figures following, to wit:

In Justice Court, before Ovide Vien, Justice of the Peace in and for Kane Township, Pottawattamie Co., Iowa.

A. H. WILLARD }
against
 E. H. STURM. }

To Chicago, Rock Island and Pacific R'y Co.:

You will take notice that you are hereby attached as garnishee in the above-entitled action, and are hereby further notified and required not to pay any debt due by you to the above-named
 35 defendant, or hereafter to become due, and that you must retain possession of all property of the said defendant now or hereafter being in your custody or under your control, in order that the same may be dealt with according to law.

And you are hereby further required to be and appear before the said Ovide Vien, Esq., a justice of the peace within and for Pottawattamie county, Iowa, at his office, in Council Bluffs, Iowa, in said county, on the 20 day of Dec., 1893, at 9 o'clock in the forenoon of that day, and make answer and disclosure according to law of any and all money due and to become due from you to the said defendant, and of all property under your control belonging to said defendant, or you will be liable to pay the entire judgment which the plaintiff may eventually obtain against the defendant.

Dated at Council Bluffs, Iowa, Dec. 13, 1893.

J. C. BAKER, *Constable.*

Remarks.

Defendant's occupation: Round-house.

Where employed: Belleville, Kansas.

Amount of claim.....	\$70.00
Costs to date.....	7.00
Att'ys' fees.....	7.00
	<hr/>
	\$84.00

From whom purchased: W. J. McKenna.

Nature of claim: Note.

GEO. T. WEBSTER,
Attorney for Plaintiff, Sioux City, Iowa.

Said answer of garnishee is in words and figures, to wit:

STATE OF IOWA, }
County of Pottawattamie, } ss:

Before Ovide Vien, justice of the peace in and for — township,
Pottawattamie county, Iowa.

A. H. WILLARD, Plaintiff, }
vs. }
E. H. STURM, Defendant, and THE CHI- } Answer of Garnishee.
cago, Rock Island and Pacific Railway }
Company, Garnishee.

Comes now The Chicago, Rock Island and Pacific Railway Com-
pany, garnishee herein, and for answer says:

It is indebted to the defendant, E. H. Sturm, in this suit in the
sum of \$77.17 as wages during November and December, 1893.

It has not in its possession or under its control any other prop-
erty, rights, and credits of the said defendant.

It knows of no other debts owing to the said defendant, and of
no other property, rights, or credits belonging to him and now in
the possession or under the control of others.

THE CHICAGO, ROCK ISLAND AND
PACIFIC RAILWAY COMPANY,
By H. PATTERSON.

STATE OF ILLINOIS, }
County of Cook, } ss:

I, J. F. Phillips, being first duly sworn, depose and say that I am
assist. treasurer of the Chicago, Rock Island and Pacific Com-
36 pany; that I have heard the foregoing answer read and know
the contents thereof, and the statements therein made are
true, as I verily believe.

J. F. PHILLIPS.

Subscribed and sworn to by J. F. Phillips before me and in my
presence this 16th day of December, A. D. 1893.

[SEAL.]

CHARLES T. SCHWARTZ,
Notary Public, Cook County, Ill.

Said notice of publication, together with al' endorsements thereon,
is in words and figures following, to wit:

" Notice by Publication."

To E. H. Sturm.

SIR: You are hereby notified that there is now pending before
Ovide Vien, a justice of the peace in and for Pottawattamie county,
Iowa, a suit in which A. H. Willard claims of you seventy dollars and
— cents as justly due on account of your promissory note, & att'y
fees; that in said cause a writ of attachment has been issued and the
following property taken by virtue thereof, to wit, Chicago, Rock
Island and Pacific R'y Co. has been garnished; that upon the return
of the original notice it was found you were absent, so that personal

service could not be made, and an order was made by said justice fixing the day for trial on the 20th day of Feb'y, 1894, at 9 o'clock a. m., and requiring notice thereof to be given by publication, and that unless you appear and answer thereto at the time so fixed for trial, default will be taken and judgment rendered for the full amount claimed, and awarding execution against the property attached.

Dated at Council Bluffs, in said county, this 20 day of Dec., A. D. 1893.

J. C. BAKER,

Constable, Potta. County.

This within notice came into my hands on the 20 day of Dec., 1893. I served the same by posting up three copies in three public places, one of which was at the door of the J. P. of which this case is pending.

All done in Kane township, Potta. Co., Ia.

60 cents.

J. C. BAKER, *Constable.*

Said petition and affidavit for an alias writ of attachment and said alias writ of attachment, with all endorsements thereon, and said second notice to garnishee are in words and figures following, to wit:

STATE OF IOWA, }
Pottawattamie County, } ss :

In Justice Court, before Ovide Vien, J. P.

A. H. WILLARD, Plaintiff, }
vs. }
E. H. STURM, Defendant. }

STATE OF IOWA, }
Pottawattamie County, } ss :

D. S. Dunkle, being duly sworn, upon oath says that he is the agent for the plaintiff; that this action is by attachment, and a writ of attachment has been issued herein and duly served and returned, but the property attached is not sufficient to satisfy the plaintiff's claim and the costs, and another writ of attachment must be issued. Wherefore affiant prays on behalf of and for the benefit of said plaintiff that another writ will be issued herein, and that the same be duly served.

D. S. DUNKLE.

37 Subscribed and sworn to before me by the said D. S. Dunkle this 11th day of January, 1894.

[SEAL.]

J. W. ANDERSON,

Notary Public.

Before Ovide Vien, justice of the peace for Kane township, Pottawattamie county, Iowa.

A. H. WILLARD, Plaintiff, }
 vs. } Alias Writ of Attachment.
 E. H. STURMS, Defendant. }

STATE OF IOWA, }
 Pottawattamie County, } ss :

To the sheriff or any constable of said county, Greeting :

Whereas the plaintiff in the above-entitled action has filed his petition under oath in the office of Ovide Vien, a justice of the peace in and for said county and State aforesaid, stating that the defendant is justly indebted to the plaintiff in the sum of \$70.00 and, as plaintiff verily believes, the said defendant is a non-resident of the State of Iowa, and asking that an alias writ of attachment may issue against the goods and chattels, property and effects, of said defendant, or so much thereof as may be necessary to secure the plaintiff's claim, and the said plaintiff having filed in my office — bond to the sum of — dollars, conditioned that the said plaintiff will pay all damages which the said defendant may sustain by reason of the wrongful suing out of said writ of attachment :

Therefore, in the name of the State of Iowa, you are hereby commanded to attach the goods and chattels, property and effects, of the said defendant as may be necessary to satisfy the above indebtedness, together with interest and costs of suit, and safely preserve the same, to be dealt with according to law, and make legal return of this writ to me at my office, in Council Bluffs, on the 20 day of Jan., 1894, at 10 o'clock a. m.

In witness whereof I, Ovide Vien, justice of the peace, have hereto subscribed my name, at my office, in Council Bluffs, this 15 day of Jan., A. D. 1894.

OVIDE VIEN,
Justice of the Peace.

STATE OF IOWA, }
 Pottawattamie County, } ss :

I, J. C. Baker, constable of Kane township, of said county, hereby certify and return that I received the within writ for service on the 15th day of January, 1894, and by virtue thereof, on the 15th Jan., 1894, I attached as garnishee The Chicago, Rock Island & Pacific Railway Company by informing W. J. Davenport, superintendent or general agent or manager thereof, at his office, in Co. Bluffs, Iowa, that said R'y Co. is attached as garnishee, and by handing to and leaving with him a written notice, a copy of which is hereto attached, marked Exhibit "A," and made a part thereof; he waived the reading of the same; that I made diligent search and inquiry for the within-named defendant and could not find him in said county, and I now return this writ and notice with my doings herein.

38	Service of writ.....	\$.50
	Mileage....	.10
	Service of notice of garnish.....	.50
	Mileage.....	.10
	Copies.....	.10
	Paid to garnishee defendant.....	.60
		<hr/>
	By attaching as garnishee by Baker.....	\$1.90

J. C. BAKER.

The within notice came into my hands on the 15 day of Jan., 1894, and I duly served the same — day by attaching the following-described property of the within named by attaching as garnishee, as shown by garnishee notice attached hereto.

Done in Kane township, Pottawattamie county, Iowa.

Service.....	\$.50
Mileage.....	.10
Levy.....	.50
Execution .....	.60
	<hr/>
	\$1.90

J. C. BAKER,

Constable of Kane Township.

In Justice's Court, before Ovide Vien, Esq., Justice of the Peace in and for Kane Township, Pott. Co., Iowa.

A. H. WILLARD }
against
 E. H. STURM. }

To Chicago, Rock Island & Pacific Railway Company :

You will take notice that you are hereby attached as garnishee in the above-entitled action, and are hereby notified and required not to pay any debt due by you to the above-named defendant, or hereafter to become due, and that you must retain possession of all property of the said defendant now or hereafter being in your custody or under your control, in order that the same may be dealt with according to law.

And you are hereby further required to be and appear before the said Ovide Vien, Esq., a justice of the peace within and for Woodbury county, Iowa, at his office, in Co. Bluffs, Iowa, in said county, on the 20 day of January, 1894, at 9 o'clock in the forenoon of that day, and make answer and disclosure, according to law, of any and all money due and to become due from you to the said defendant, and of all property under your control belonging to said defendant, or you will be liable to pay the entire judgment which the plaintiff may eventually obtain against the defendant.

Dated at Co. Bluffs, Iowa, Jan. 15, 1894.

J. C. BAKER,

Special Constable.

Remarks.

Defendant's occupation: —.

Where employed: Round-house, Belleville, Kausas.

From whom purchased: — —.

Nature of claim: —.

Amount of claim: —.

Costs to date: —.

Will accept in full of claim and costs: —.

D. S. DUNKLE,
Agent for Plaintiff.

39 Said appeal bond is in words and figures following, to wit:

In Justice's Court, before O. Vien, Esq.

A. H. WILLARD
*against*E. H. STURM and CHICAGO, ROCK ISLAND AND } Appeal Bond.
Pacific Railway Co., Gar.

The undersigned acknowledge ourselves indebted to A. H. Willard in the sum of three hundred dollars upon the following conditions:

Whereas Chicago, Rock Island and Pacific R'way Co. has appealed from the judgment of Ovide Vien, a justice of the peace, in an action between A. H. Willard, as plaintiff, and E. H. Sturm, as defendant, & Chicago, Rock Island and Pacific Railway Co., garnishee:

Now, if said appellant pays whatever amount is legally adjudged against him in the further progress of this cause, then this bond to be void.

CHICAGO, ROCK ISLAND & PACIFIC
RAILWAY CO.,
By WRIGHT & BALDWIN,

*Its Att'ys, Principal.*W. L. HENRY, *Surety.*

Approved:

OVIDE VIEN,

Justice of the Peace.

STATE OF IOWA, }
Pottawattamie County, } ss:

H. L. Henry, being duly sworn, says that he is a resident of Pottawattamie county, State of Iowa; that he is worth the sum of nine hundred dollars over and above his debts and liabilities, and has property of the value of nine hundred dollars not exempt from execution.

. H. L. HENRY, *Surety.*

Subscribed and sworn to by W. L. Henry, before me and in my presence, this 12 day of March, 1894.

[SEAL.]

GEO. S. WRIGHT,
Notary Public.

Said transcript of the docket entries of said justice of the peace is in words and figures following, to wit :

Before Ovide Vien, justice of the peace, Kane township, Pottawat-
tamie county.

A. H. WILLARD }
vs.
E. H. STURM. }

Be it remembered that on the 13 day of Dec., A. D. 1893, one A. H. Willard filed his petition, under oath, in my office, demanding of the defendant the sum of seventy & no ¹⁰⁰ dollars, & att'ys' fees, on a note, and asking a writ of attachment against the goods and chattels, rights and credits, of the defendant, and on the same day filed his attachment bond in the sum of \$300, with I. Webster as sureties, and on the same day I approved said bond and issued said writ of attachment, returnable on the 20 day of December, A. D.

1893, at 10 o'clock a. m., and an original notice, returnable on
40 the same day and at the same hour, and placed both writ and said original notice in the hands of Constable J. C. Baker for service, who, on the 13 day of Dec., A. D. 1893, made due and legal return that he had served said writ of attachment by attaching as garnishee The Chicago, Rock Island and Pacific R'y Co. and citing it to appear and make answer on the 20 day of Dec., 1893, at 10 o'clock a. m. Original notice returned not served, the defendant not found in the county.

On this 18 day of Dec., 1893, garnishee defendant answers that it is indebted to the defendant in the sum of \$77.17. On motion of plaintiff, this cause is continued until the 20 day of Feb'y, 1894, at 9 o'clock a. m., and it being shown that the defendant is a non-resident of the State of Iowa, it is ordered by the court that notice of the pendency of this action be given defendant by publication. On this 15 day of Jan., 1894, plaintiff ask- for an alias writ of attachment, and on the same day I issued said alias writ of attachment, made returnable on the 20 day of Jan., 1894, at 10 o'clock a. m., and placed said alias writ of attachment in the hands of Constable J. C. Baker for service, who, on the 15 day of Jan., 1894, made due and legal return that he had served said alias writ of attachment by attaching as garnishee The Chicago, Rock Island and Pacific Railway Co. and citing it to appear and make answer on the 20 day of Jan., 1894, at 10 o'clock a. m.

At time set for hearing plaintiff appears, by attorney, defendant fails to appear, and after due time is declared in default; the evidence is taken and the court finds due plaintiff the sum of \$76.16 and the costs of this action, taxed at \$19.00. It is therefore ordered and adjudged that the plaintiff have and recover of and from the garnishee, The Chicago, Rock Island & Pacific R'y Co., the sum of \$95.17, and that said amount be condemned out of the moneys answered herein and paid into the court and applied upon this judgment, and that — default of such payment that execution issue against said garnishee.

OVIDE VIEN, J. P.

Justice Fees.

On motion.....	\$.50
Docket....	.50
Bond .....	.50
Writ .....	.25
Petition.....	.50
Ans. of gar....	.50
Const.....	.25

Constable Fees.

Serv. notice.....	\$.50
Copies.....	.10
Mileage .....	.10
Serv. writ.....	.10
Garnishee fees.....	.60
Pot. publ.....	.60
Serv. alias writ....	1.10
Notice .....	.50
Copies .....	.10
Mileage . . . . .	.10
Gar. fees.....	.60

STATE OF IOWA, }
Pottawattamie County, } ss :

I do hereby certify that the above is a true copy of the
41 original record and entries in my docket in the above in
which such entries are entitled; that I have compared such
copy with such original and the same is a correct transcript there-
from and of the whole of such original.

Witness my hand this 2 day of April, 1894.

OVIDE VIEN,
Justice — P'ace.

STATE OF IOWA, }
Pottawattamie County, } ss :

I, T. S. Campbell, clerk of the district court within and for the
county and State aforesaid, hereby certify that the above and fore-
going is a full, true, and complete copy of the proceedings, papers, &
transcript filed in the above-entitled cause, as the same remains of
record and on file in this office.

In witness whereof I have hereunto set my hand and affixed the
seal of said court on the 3 day of May, A. D. 1894.

T. S. CAMPBELL,
Clerk of the District Court.

STATE OF IOWA, ss :

I, the undersigned, one of the judges of the district court of the
State of Iowa in and for the fifteenth judicial district do hereby
certify that T. S. Campbell, whose genuine signature is attached to
the foregoing certificate, was at the time of so signing said certifi-
cate clerk of the district court of Iowa in and for the county of

Pottawattamie, having by law the custody of the records and seal of said court; that to his acts as said clerk full faith and credit are due and ought to be given, and that said certificate is in due form of law.

Witness my hand officially this the 3 day of May, A. D. 1894.

WALTER I. SMITH,

Judge District Court, Fifteenth Judicial District of Iowa.

STATE OF IOWA, }
Pottawattamie County, } ss: .

I, the undersigned, clerk of the district court within and for the county and State aforesaid, do certify that the Hon. Walter I. Smith, whose signature appears on the foregoing certificate, was at the date of said certificate one of the judges of said district court within and for the fifteenth judicial district of Iowa; that I am well acquainted with his handwriting, and that the signature to the foregoing is his genuine signature.

In testimony whereof I hereunto set my hand and caused to be affixed the seal of said court, at Council Bluffs, this the 3 day of May, A. D. 1894.

[SEAL.]

T. S. CAMPBELL,
Clerk of the District Court.

Filed Oct. 10, 1894.

A. ELLINGSON,
Clerk Dist. Court.

42 Mr. DOLMAN: Defendant offers in evidence section 2975 of the Revised Code of Iowa, 1888, relating to garnishment, which reads as follows:

"SEC. 2975. (As amended by ch. 58, 18th G. A.) (How affected).—The attachment by garnishment is effected by informing the supposed debtor or person holding the property, that he is attached as garnishee, and by leaving with him a written notice to the effect that he is required not to pay any debt due by him to the defendant, or thereafter to become due, and that he must retain possession of all property of the said defendant then, or thereafter, being in his custody or under his control, in order that the same may be dealt with according to law, and the sheriff shall summon such persons as garnishees as the plaintiff may direct. (But no judgment shall be entered in any garnishment proceeding condemning the property or debt in the hands of the garnishee until the principal defendant shall have had ten days' notice of such proceedings. If the case is pending in the district or circuit court the notice shall be served in the same manner as original notices are required to be served. If the case is pending before a justice of the peace, — if he be a resident of the county; otherwise service of such notice may be made by posting the same in three public places in the township, in the manner provided by sections 3609 and 3610 of the code. The fact that the defendant is not a resident of the

county may be shown by the affidavit of the plaintiff or his attorney filed with the justice before such notices are posted.)”

Mr. BULLEN: I want to object to this as being incompetent, irrelevant, and immaterial and as not forming part of the defense to this action. The laws of Iowa have nothing to do with this case.

The COURT: Objection is overruled.

To which ruling of the court the plaintiff at the time duly excepted.

Mr. DOLMAN: The defendant now offers in evidence subdivision 4 of section 2967 of the Revised Code of Iowa, 1888, which reads as follows:

“Debts due the defendant, or property of his held by third persons and which cannot be found, or the title to which is doubtful, are attached by garnishment thereof.”

Mr. BULLEN: Same objection.

The COURT: Same ruling.

Pl’ff excepts.

Mr. DOLMAN: Defendant now offers in evidence section 2951 of the Revised Code of Iowa, 1888, and particularly subdivision 2 of that section:

“SEC. 2851. (Petition must state.)—The petition which asks an attachment must in all cases be *shown* to. It must state:

1. That the defendant is a foreign corporation, or acting as such; or,

2. That he is a non-resident of the State; or,

3. That he is about to remove his property out of the State without leaving sufficient of his property for the payment of his debts; or,

4. That he has disposed of his property, in whole or in part, with intent to defraud his creditors; or,

5. That the defendant is about to dispose of his property with intent to defraud his creditors; or,

6. That he has absconded, so that the ordinary process cannot be served upon him; or,

7. That he is about to remove permanently out of the county and has property therein not exempt from execution, and that he refuses to pay or secure the plaintiff; or,

43 8. That he is about to remove permanently out of the State, and refuses to pay or secure the debt due the plaintiff; or,

9. That he is about to remove his property, or a part thereof, out of the county with intent to defraud his creditors; or,

10. That he is about to convert his property, or a part thereof, into money for the purpose of placing it beyond the reach of his creditors; or,

11. That he has property or rights in action which he conceals; or,

12. That the debt is due for property obtained under false pretenses.”

Mr. BULLEN: Same objections.

The COURT: Same ruling.

Plaintiff excepts.

Mr. DOLMAN: Defendant offers in evidence section 2618 of the Revised Code of Iowa, 1888, and especially subdivision 5 of said section, which reads as follows:

"SEC. 2618. (In what actions and when made.)—Service may be made by publication when as affidavit is filed and personal service cannot be made on the defendant within this State, in either of the following cases:

1. In actions brought for the recovery of real property, or an estate or interest therein;

2. In an action for the partition of real property;

3. In an action for the sale of real property under a mortgage lien or other incumbrance or charge;

4. In actions to compel the specific performance of a contract of sale of real estate, or in actions to establish or set aside a will where, in such cases, any or all of the defendants reside outside of this State, and the real property is within this State;

5. In actions brought against a non-resident of this State, or a foreign corporation having in this State property or debts owing to such defendant sought to be taken by any of the provisional remedies, or to be appropriated in any way;

6. In actions which relate to, or the subjects of which is real or personal property in this State when any defendant has, or claims a lien of interest, actual or contingent therein or the relief demanded consists wholly or partly in excluding him from any interest therein, and such defendant is a non-resident of this State, or a foreign corporation;

7. In all actions where the defendant being a resident of the State has departed therefrom, or from the county of his residence with intent to delay or defraud his creditors, or to avoid the service of a notice, or keeps himself concealed therein with like intent;

8. Where the action is for a divorce, if the defendant is a non-resident of the State of Iowa, or his residence is unknown."

Mr. BULLEN: Same objection.

The COURT: Same ruling.

Pl'ff excepts.

Mr. DOLMAN: Defendant now offers in evidence section 3072 of the Revised Code of Iowa, 1888, relating to exemptions, which reads as follows:

"SEC. 3072. (As amended by ch. 42, G. A.; ch. 62, 19 G. A., and ch. 49, 19 G. A. Property enumerated.)—If the debtor is a resident of this State, and is the head of a family, he may hold
44 exempt from execution the following property. All wearing apparel of himself and family kept for actual use and suitable to their condition, and the trunks or other receptacles necessary to contain the same; one musket or rifle and shotgun; all private libraries, family Bibles, portraits, pictures, musical instruments, and paintings, not kept for the purpose of sale, a seat or pew occupied by the debtor or his family in any house of public worship, an interest in a public or private burying ground, not exceeding one acre for any defendant; two cows and calf; one horse, unless a horse is exempt as hereinafter provided; fifty

sheep and the wool therefrom, (and the materials manufactured from such wool) six stands of bees; five hogs, and all pigs under six months; the necessary food for all animals exempt from execution, for six months; all flax raised by the defendant on not exceeding one acre of ground, and the manufacturers therefrom; one bedstead and the necessary bedding for every two in the family; all cloth manufactured by the defendant, not exceeding one hundred yards in quantity; household and kitchen furniture not exceeding two hundred dollars in value; all spinning wheels and looms, one sewing machine, and other instruments of domestic labor kept for actual use; the necessary provisions and fuel for the use of the family for six months; the proper tools, instruments, or books of the debtor, if a farmer, mechanic, surveyor, clergyman, lawyer, physician, teacher or professor; the horse or the team, consisting of not more than two horses or mules, or two yoke of cattle, and the wagon or other vehicle with a proper harness or tackle, by the use of which the debtor, if a physician, public officer, farmer, teamster, or other laborer habitually earns his living. (If the debtor is a seamstress, one sewing machine shall be exempt from execution and attachment.) And to the debtor, if a printer, there shall also be exempt a printing press and a newspaper office connected therewith, not to exceed in all the value of twelve hundred dollars. (And any person entitled to any of the exemptions mentioned in this section does not waive his rights thereto by failing to designate or select such exempt property, or by failing to object to a levy thereon, unless failing or refusing to exempt property, or by failing to object to a levy thereon, unless failing or refusing so to do when required to make such designation or selection by the officer about to levy.)"

Mr. BULLEN: Same objection.

The COURT: Same ruling.

Pl'ff excepts.

Mr. DOLMAN: The defendant now offers in evidence section 3074 of the Revised Code of the State of Iowa, which reads as follows:

"SEC. 3074. The earnings of such debtor for his personal services, or those of his family, at any time within ninety days next preceding the levy, are also exempt from execution and attachment."

Mr. BULLEN: Same objection.

The COURT: Same ruling.

Pl'ff excepts.

Mr. DOLMAN: The defendant also offers in evidence section 3075 of the Revised Code of Iowa, which reads as follows:

"SEC. 3075. (Unmarried persons).—There shall be exempt to an unmarried person, not the head of a family and to non-residents, their own ordinary wearing apparel and trunks necessary to contain the same."

45 Mr. BULLEN: I wish to object to all of this because of the fact that the laws of Iowa have nothing to do with the exemption laws of Kansas.

The COURT: Objection is overruled.

To which ruling of the court the plaintiff at the time duly excepted.

And thereupon the evidence closed.

And the above and foregoing is all the evidence introduced upon the trial of this case and all the evidence considered by the court in rendering its decision herein.

And thereupon counsel for plaintiff and defendant argued this case to the court; and the court, having heard said arguments of counsel and duly considered the same, said:

By the COURT: I will say in this case, as I did in the other, that except for the Sharitt case, it would seem that the defense set up by the defendant would be good—that is, that its garnishment in Iowa should be a defense to an action against it here; and although, as the Minnesota court says, that decision seems to be contrary to the authorities (even its own former decision), yet it appears to be the decision of our supreme court, and, being such, it is my duty to follow it, although it seems to work a hardship—that is, to hold that if you owe me money here and go into an adjoining State you can there be compelled by legal proceedings to pay it to my creditors there, and then when you return here, to also to pay it to me. If that is the law, it is time it were known. It certainly contradicts the old saw, "that you can't have your cake and eat it." Both States ought not to compel defendant to pay, even though the debt be exempt here. One payment should be enough. The main question in the case is, Which State has the better right to compel payment? In view of the Sharitt decision and that the question ought to be settled, and that if the defendant does not take the case up it won't go, the decision of this court is against the defendant and for the plaintiff in the sum agreed upon, to wit, \$110.00, with interest from this date at 6 per cent.

Mr. DOLMAN: To all of which judgment of the court the defendant excepts.

And thereafter and on the day of the rendition of said judgment the defendant caused to be filed in the office of the clerk of said court a motion for a new trial in said cause; which motion was and is in words and figures as follows, to wit:

In the District Court of Republic County, Kansas.

E. H. STURM, Plaintiff,

vs.

THE CHICAGO, ROCK ISLAND & PACIFIC
Railway Company, Defendant.

} Motion for a New Trial.

46 Comes now the above-named defendant and moves the court to vacate its decision herein and set it aside and for a new trial in this action for the following causes, affecting materially the substantial rights of this defendant:

1. That said decision is not sustained by sufficient evidence.
2. That said decision is contrary to law.

3. That said decision is contrary to the evidence.
4. Error of law occurring at the trial and excepted to by the defendant at the time.
5. That said decision is contrary to, and in conflict with, section 1 of article 4 of the Constitution of the United States of America.
6. That said decision should be in favor of the defendant and against the plaintiff.

J. E. DOLMAN,
Attorney for Defendant.

(Endorsed:) "Filed Oct. 23, 1894. A. Ellingson, clerk dist. court."

And thereupon, on said 23rd day of October, 1894, said motion for a new trial came on before the court for hearing, the plaintiff appearing by V. D. Bullen, his attorney, and the defendant appearing by J. E. Dolman, its attorney, and the court, having heard the argument of counsel for and against said motion, did overrule and disallow said motion; to which ruling of the court the defendant then and there duly excepted.

And thereafter such other and further proceedings were had in this cause as are shown by the following journal entry, which was filed in the office of the clerk of said court on said 23rd day of October, 1894:

In the District Court of Republic County, Kansas.

E. H. STURM, Plaintiff,	}	Journal Entry.
<i>vs.</i>		
THE CHICAGO, ROCK ISLAND AND PACIFIC RAIL- way Company, Defendant.		

Now, on this 23rd day of October, 1894, comes the plaintiff in the above-entitled cause, by V. D. Bullen, his attorney, and also the defendant, — J. E. Dolman, its attorney, and, both parties having announced themselves ready for trial and a jury being waived by the parties, trial is duly had to the court; the plaintiff introduced his evidence and rests his case; the defendant introduced its evidence and rests its case; and the court, after due consideration and arguments of counsel, finds in favor of the plaintiff and against the defendant in the sum of \$110.00.

It is therefore ordered, considered, and adjudged by the court that the plaintiff do have and recover from the defendant the sum of \$110.00, with interest at 6 per cent. from this date. Defendant excepts.

47 Thereupon, on the same day, to wit, October 23rd, 1894, defendant files its motion for a new trial; which said motion, after due consideration by the court and after arguments of counsel, is by the court overruled. Defendant excepts. Defendant, for good cause shown, is allowed 90 days from this date in which to make and serve a case-made for the supreme court, plaintiff to have 10 days

thereafter to suggest amendments, and the same to be settled and signed on five days' notice by either party.

And execution is hereby stayed until the expiration of the time so allowed to make and serve said case-made.

F. W. STURGES, *Judge.*

STATE OF KANSAS, }
Republic County, } ss :

The above and foregoing is a full, true, complete, and perfect case-made for the supreme court in this case, wherein E. H. Sturm is plaintiff and The Chicago, Rock Island & Pacific Railway Company is defendant, and contains all the pleadings in said case, the bill of particulars, answers, motions, reply-s, bonds or undertakings, affidavits, transcripts, orders, and proceedings, and also contains all the evidence introduced upon the trial of said case before the said court, oral and documentary, and all objections, rulings of the court, and exceptions taken thereto; also all judgments and exceptions taken thereto, and all journals —, motion for new trial and rulings thereon and exceptions taken thereto, and is a full, true, and complete record of this case for review by the supreme court, containing all the evidence offered or introduced upon the trial and all the evidence considered by the court in rendering judgment herein.

JOHN E. DOLMAN,
 JAY F. CLOSE,
Attorneys for Defendant.

45 To V. D. Bullen, attorney of record for the plaintiff in said case :

You are hereby served with the above and foregoing as a full, true, complete, and perfect case-made for review by the supreme court of the State of Kansas in the case wherein E. H. Sturm was plaintiff & The Chicago, Rock Island & Pacific Company was defendant, tried at the October term, A. D. 1894, of the district court of Republic county, Kansas.

Witness my hand this 24th day of December, A. D. 1894.

JOHN E. DOLMAN,
 JAY F. CLOSE,
Attorney- for Defendant.

STATE OF KANSAS, }
Republic County, } ss :

I, V. D. Bullen, attorney of record for the plaintiff, E. H. Sturm, in the above-mentioned case, do hereby certify that the above and foregoing case-made for the supreme court was duly served upon me on this 24th day of December, A. D. 1894.

V. D. BULLEN,
Attorney for Plaintiff, E. H. Sturm.

49 In the District Court of Republic County, Kansas.

E. H. STURM, Plaintiff,

vs.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY
Company, Defendant.

} Certificate.

Be it remembered that on this 4th day of January, A. D. 1895, before me, F. W. Sturges, judge of the district court of Republic county, State of Kansas, and the judge who sat at the trial of the above-entitled action, while sitting at chambers in the county of Cloud, State of Kansas, appeared said plaintiff, by his attorney, V. D. Bullen, and the said defendant, by its attorney of record, J. E. Dolman, for the purpose of having the above and foregoing case-made allowed, settled, signed, and attested; and it appearing that the said above and foregoing case-made was by the said defendant duly served upon the said plaintiff within the time allowed by this court, and the said plaintiff has offered and suggested his amendments thereto, and that the same as above set forth, having been fully examined by me, is true and correct and contains a true and correct statement and complete transcript of all the pleadings, motions, orders, evidence, findings, judgments, and proceedings in said cause:

Therefore I, the said judge, F. W. Sturges, while sitting at chambers, as aforesaid, do hereby allow, settle, sign, and certify the same as being a true, perfect, full, and complete case-made for review by the supreme court in the above-entitled-case, and that it is hereby ordered that the clerk of the said court attest this case-made with his signature and seal of said court, and file the same of record in his office, and that the said defendant be allowed to withdraw the said case-made from the files of the said court to attach to his petition in error for review in the said supreme court.

F. W. STURGES,

*Judge of the District Court of Republic
County, State of Kansas.*

[SEAL.]

Attest: A. ELLINGSON,

*Clerk of the District Court of
Republic County, Kansas.*

Filed Feb. 18, 1895.

C. J. BROWN,

Clerk Sup. Court.

Filed Jul- 22, 1895.

D. A. VALENTINE,

Clk Court of Appeals, Northern Dep., Cent. Division.

I, W. H. Gates, clerk of the Kansas court of appeals, northern department, central division, do hereby certify that the above and foregoing is a true, full, and complete copy of the petition in error and case-made in the case of C., R. I. & P. Ry Co. vs. E. H. Sturm, as the same appears on file in my office.

Witness my hand and the seal of said court, at my office, in Concordia, the 27 day of March, 1897.

[SEAL.]

W. H. GATES, *Clerk.*

Filed Apr. 1, 1897.

C. J. BROWN,
Clerk Sup. Court.

50 And also, on the said 6th day of April, 1897, there was issued by the clerk of the supreme court of the State of Kansas a summons in error, which, — the return of service thereon endorsed *thereon* and all other endorsements, is in words and figures as follows, to wit:

51 STATE OF KANSAS, ss:

Supreme Court.

The State of Kansas to the sheriff of Republic county, Greeting:

You are hereby commanded to notify E. H. Sturm, defendant in error, that The Chicago, Rock Island and Pacific Railway Company, plaintiff in error, did, on the 1st day of April, A. D. 1897, file in the clerk's office of the supreme court of Kansas a petition in error and transcript of record or case-made, the object of which is to obtain a reversal of a certain judgment rendered by the court of appeals, northern department, central division, and State of Kansas, in an action pending before said court, wherein the said plaintiff in error was plaintiff in error and the said defendant in error was defendant in error.

You will make due return of this summons in error on or before the 16th day of April, A. D. 1897.

Witness my hand and the seal of the supreme court, affixed hereto, at my office, in Topeka, this 6th day of April, A. D. 1897.

[SEAL.]

C. J. BROWN,
Clerk Supreme Court,
By V. T. GRAVES, *Dep'y.*

STATE OF KANSAS, }
County of Republic, } ss:

I received this summons in error on the 8th day of April, 1897, at 9 o'clock a. m., and served the same on the 9th day of April, 1897, by *by* V. D. Bullen, att'y for E. H. Sturm, accepting service.

R. B. WARD, *Sheriff.*

Fees—service, .50.

10831. Supreme court, State of Kansas. C., R. I. & P. R'y Co. vs. E. H. Sturm. Summons in error. Issued Apr. 6th, 1897; returnable Apr. 16th, 1897. M. A. Low, W. F. Evans, attorneys for plaintiff in error. Filed Apr. 13, 1897. C. J. Brown, clerk sup. court.

BELLEVILLE, KANSAS, 4, 9, '97.

I hereby acknowledge service of the within writ and waive any irregularity in serving the same.

V. D. BULLEN,
Att'y for Def't in Error, E. H. Sturm.

52 Be it further remembered that on the 28th day of April, A. D. 1897, there was filed in the office of the clerk of the supreme court of the State of Kansas a motion to dismiss, together with a notice of the time and place of hearing said motion attached to said notice; which motion and notice, with the service of the same endorsed thereon and other endorsements, *is* in words and figures as follows, to wit:

53 In the Supreme Court of the State of Kansas.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAIL- way Company, Plaintiff in Error, <i>vs.</i> E. H. STURM, Defendant in Error.	}	Motion to Dismiss.
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Comes now the defendant above named and moves the court to dismiss the above-entitled action for the following reasons, to wit:

First. That the court has no jurisdiction of the cause, for the reason that the amount in controversy, exclusive of cost, does not exceed one hundred dollars (\$100.00).

Second. That there is no certificate of the trial judge filed herewith showing that it is a case involving the tax or revenue laws, or the title to real estate, or an action for damages in which slander, libel, malicious prosecution, or false imprisonment is declared upon, or the constitution of the State, or the Constitution, laws, or treaties of the United States.

V. D. BULLEN,
Att'y for Defendant in Error.

In the Supreme Court of the State of Kansas.

THE CHICAGO, ROCK ISLAND AND PACIFIC } Railway Company, Plaintiff in Error, <i>vs.</i> E. H. STURM, Defendant in Error.	}	Notice of Motion to Dismiss.
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To M. A. Low, W. F. Evans, and J. E. Dolman, attorneys for plaintiff in error:

You are hereby notified that a motion will be filed in the above-entitled action on or before May 1st, 1897, to dismiss the above-entitled proceeding in error for the following reasons, to wit:

First. That the court has no jurisdiction of the cause, for the reason that the amount in controversy, exclusive of costs, does not exceed one hundred dollars (\$100.00).

Second. That there is no certificate of the trial judge showing that

it is one of the cases excepted under par. 4642 and sec. 542a, G. S., 1889, defining the jurisdiction of this court.

A true copy of the said motion being hereto attached and marked "Exhibit A."

That the said motion will be called up for hearing before said court on the sixth (6th) day of May, 1897, at ten (10) o'clock a. m. of said day, or as soon thereafter as counsel may be heard.

V. D. BULLEN,

Att'y for Defendant in Error.

We hereby acknowledge service of the motion mentioned in the above notice, and waive any irregularity in serving the same this 26th day of April, 1897.

M. A. LOW,

W. F. EVANS, AND

J. E. DOLMAN,

Attorneys for Plaintiff in Error.

(Endorsed :) 10831. C., R. I. & P. R'y Co. vs. E. H. Sturm. Motion to dismiss. Filed Apr. 28, 1897. C. J. Brown, clerk sup. court.

54 Be it further remembered that on the 7th day of May, A. D. 1897, the same being one of the regular judicial days of the January, A. D. 1897, term of the supreme court of the State of Kansas, the said court in session at the supreme court room, in the city of Topeka, there being present the Honorable Frank Doster, chief justice, and the Honorable Wm. A. Johnston and the Honorable Stephen H. Allen, associate justices, and C. J. Brown, Esq., clerk of said court, the following proceedings were had and entered of record, to wit:

55

Journal Entry of Dismission.

C., R. I. & P. R'L'Y Co., Pl'ff in Error,	}	No. 10831.
vs.		
E. H. STURM, Def't in Error.		

Now comes on to be heard the motion of defendant in error to dismiss this cause for the reasons set forth in said written motion on file; and thereupon, after oral argument by W. F. Evans against the motion, said motion is submitted and taken under advisement by the court.

56

And be it further remembered that on the 21st day of May, A. D. 1897, the same being one of the regular judicial days of the January, A. D. 1897, term of the supreme court of the State of Kansas, the said court being in session at the supreme court room, at the city of Topeka, there being present the Honorable Frank Doster, chief justice, and the Honorable Wm. A. Johnston and the Honorable Stephen H. Allen, associate justices, and C. J. Brown, Esq., clerk of said court, the following proceeding was had and remains of records, to wit:

Journal entry, May 21.

57 C. R. I. & P. R'l'y Co., Pl'ff in Error, } Journal Entry.
vs. } 10831.
E. H. STURM, Def't in Error.

Now comes on for decision the motion of defendant in error to dismiss this cause; and thereupon it is ordered that said motion be overruled.

58 Be it further remembered that on the 6th day of October, A. D. 1897, there was filed in the office of the clerk of the supreme court of the State of Kansas proof of service of the brief of plaintiff in error, which, with the endorsements thereon, is in words and figures as follows, to wit:

59 1083-

In the Supreme Court, State of Kansas.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY }
Company, Plaintiff in Error, } No. 10831.
vs.
E. H. STURM, Defendant in Error.

M. A. Low, W. F. Evans, and J. E. Dolman, for plaintiff in error; V. D. Bullen, for defendant in error.

Brief for Plaintiff in Error.

* * * * *

We hereby acknowledge service upon us of the within brief and receipt of a copy of the same this 4th day of October, 1897.

V. D. BULLEN,
Attorney for Def't in Error.

60 Be it further remembered that on the 3rd day of November, A. D. 1897, there was filed in the office of the clerk of the supreme court of the State of Kansas an order from the defendant directing the clerk to submit said cause upon the part of the defendant on the brief filed in said cause; which said order, with the endorsements thereon, is in words and figures as follows, to wit:

61 Office of V. D. Bullen, lawyer.

BELLEVILLE, KANSAS, 11, 2, '97.

Hon. John Martin, Topeka.

DEAR SIR: I am not yet sure that I can be in attendance at the supreme court this session, and, if I am not present, I desire cases Nos. 10831 and 10832 submitted on brief so far as the defendants in error are concerned. I remain

Very truly yours,

V. D. BULLEN,
Att'y for Defendants in Error.

(Endorsed :) #10831 & 10832. Submit on briefs for def't in error. Filed Nov. 3, 1897. Jno. Martin, clerk sup. court.

62 Be it further remembered that on the 5th day of November, A. D. 1897, the same being one of the regular judicial days of the July, A. D. 1897, term of the supreme court of the State of Kansas, said court being in session at the supreme court room, in the city of Topeka, there being present the Honorable Frank Doster, chief justice, and the Honorable Wm. A. Johnston and the Honorable Stephen H. Allen, associate justices, and Jno. Martin, Esq., clerk of said court, the following proceeding was had and remains of record, to wit :

Nov. 5.

63

Journal Entry of Submission.

C., R. I. & P. R'L'Y Co., Pl'ff in Error,	} No. 10831.
<i>vs.</i>	
E. H. STURM, Def't in Error.	

This cause comes on to be heard on the petition in error and transcript of the record of the court of appeals, northern department.

And thereupon, after oral argument by W. F. Evans, for the plaintiff in error, and by Thomas Dever and V. D. Bullen, for the defendant in error, said cause is submitted on brief of counsel for both parties and taken under advisement by the court.

64 And be it further remembered that on the 11th day of December, A. D. 1897, the same being one of the regular judicial — of the July, A. D. 1897, term of the supreme court of the State of Kansas, there being present the Honorable Frank Doster, chief justice, and the Honorable Wm. A. Johnston and the Honorable Stephen H. Allen, associate justices, and Jno. Martin, Esq., clerk of said court, the following proceeding was had and remains of record, to wit :

Dec. 11.

65

Journal Entry Affirming Judgment.

C., R. I. & P. R'L'Y Co., Pl'ff in Error,	} No. 10831.
<i>vs.</i>	
E. H. STURM, Def't in Error.	

This cause comes on for decision ; and thereupon it is ordered and adjudged that the judgment of the court of appeals, northern department, affirming the judgment of the district court, be affirmed.

It is further ordered that the plaintiff in error pay the costs of this case in this court, taxed at \$—, and hereof let execution issue.

66

Be it further remembered that on the 11th day of December, A. D. 1897, there was filed in the office of the clerk of

the supreme court of the State of Kansas the opinion of the court, which, with the endorsements thereon, is in words and figures as follows, to wit:

67	THE CHICAGO, ROCK ISLAND & PACIFIC Railway Company v. E. H. STURM and	}	10831. Error from Court of Appeals, Northern Department. Affirmed.
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THE CHICAGO, ROCK ISLAND AND PACIFIC Railway Company v. DAVID CAMPBELL.	}	10832. Error from Court of Appeals, Northern Department. Affirmed.
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Opinion.

Per Curiam:

The facts in these cases clearly bring them within the ruling in Missouri Pacific R'y Co. v. Sharritt, 43 Kan., 375, and for the reasons stated by Mr. Justice Valentine in that case the judgment in these cases will be affirmed.

(Endorsed :) 10831: C., R. I & P. R'y Co. vs. E. H. Sturm. 10832: C., R. I. & P. R'y Co. vs. David Campbell. Opinion, P. C. Filed Dec. 11, 1897. Jno. Martin, clerk sup. court.

68 Be it further remembered that on the 23rd day of December, A. D. 1897, there was filed in the office of the clerk of the supreme court of the State of Kansas a petition for writ of error, together with an assignment of errors; which petition and assignment, with the endorsements thereon, is in words and figures as follows, to wit:

69 In the Supreme Court of the United States.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Plaintiff in Error, v. E. H. STURM, Defendant in Error.	}
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Comes now said The Chicago, Rock Island and Pacific Railway Company, plaintiff in error in the above-entitled cause, and says that in the record and proceedings of the supreme court of the State of Kansas in said cause there is manifest error, in this, to wit:

I.

That said supreme court of the State of Kansas erred in rendering judgment against said plaintiff in error and in favor of said defendant in error.

II.

That said supreme court of the State of Kansas erred in refusing

to give full faith and credit to the records and judicial proceedings of the State of Iowa.

III.

That said supreme court of the State of Kansas erred in refusing to give full faith and credit to records and judicial proceedings of the court of the State of Iowa.

70

IV.

That said supreme court of the State of Kansas refused to give such faith and credit to the records and judicial proceedings of the courts of the State of Iowa as they have by law and usage in said courts of said State.

V.

That said supreme court of the State of Kansas refused to give such faith and credit to the records and judicial proceedings of the courts of the State of Iowa, authenticated in accordance with and as prescribed by the statutes of the United States, as said records and judicial proceedings have by law and usage in the courts of said State of Iowa.

VI.

That said supreme court of the State of Kansas erred by denying to the duly proven and properly authenticated records and judicial proceedings of the courts of the State of Iowa such faith and credit as they are entitled to and have by law and usage in said courts of the State of Iowa.

VII.

That said supreme court of the State of Kansas refused to give full faith and credit to the acts, records, and judicial proceedings of the State of Iowa, contrary to and in violation of section 1 of article IV of the Constitution of the United States and section 905 of the Revised Statutes of the United States.

71

VIII.

That said supreme court of the State of Kansas refused to give full faith and credit to the records and judicial proceedings of the courts of the State of Iowa, said records and judicial proceedings being duly proven and properly authenticated in accordance with and as prescribed by the act of Congress entitled "An act to prescribe the mode in which the public acts, records, and judicial proceedings in each State shall be authenticated so as to take effect in every other State," approved May 26, 1790.

IX.

That said supreme court of the State of Kansas refused to give the records and judicial proceedings of the State of Iowa and of the courts of said State, which were duly proven and properly authenticated in accordance with and as prescribed by the act of Congress

entitled "An act to prescribe the mode in which the public acts, records, and judicial proceedings in each State shall be authenticated so as to take effect in every other State," approved May 26, 1790, such faith and credit as said records and judicial proceedings have by law and usage in the courts of said State of Iowa.

X.

The decision and judgment of said supreme court of the State of Kansas and each of them are contrary to and in violation of section 1 of article IV of the Constitution of the United States and of the act of Congress entitled "An act to prescribe the mode in which the public acts, records, and judicial proceedings in each State shall be authenticated so as to take effect in every other State," approved May 26, 1790.

72

XI.

That said supreme court of the State of Kansas refused to give full faith and credit to the records and judicial proceedings, which were properly proven and duly authenticated, in accordance with and as prescribed by the act of Congress entitled "An act to prescribe the mode in which the public acts, records, and judicial proceedings in each State shall be authenticated so as to take effect in every other State," approved May 26, 1790, of the district court of Iowa within and for the county of Pottawattamie in the case of A. H. Willard, plaintiff, *v. E. H. Sturm*, defendant, and The Chicago, Rock Island and Pacific Railway Company, garnishee.

XII.

That said supreme court of the State of Kansas refused to give such faith and credit to the records and judicial proceedings, which were properly proven and duly authenticated, in accordance with and as prescribed by the act of Congress entitled "An act to prescribe the mode in which the public acts, records, and judicial proceedings in each State shall be authenticated so as to take effect in every other State," approved May 26, 1790, of the district court of Iowa within and for the county of Pottawattamie in a case pending in said court wherein A. H. Willard was plaintiff, E. H. Sturm, defendant, and The Chicago, Rock Island and Pacific Railway Company, garnishee, as said records and judicial proceedings have by law and usage in the courts of said State of Iowa.

73

XIII.

That said supreme court of the State of Kansas refused to give the properly proven and duly authenticated records and judicial proceedings of the courts of Iowa within and for the county of Pottawattamie in the case of A. H. Willard, plaintiff, *v. E. H. Sturm*, defendant, and The Chicago, Rock Island and Pacific Railway Company, garnishee, such faith and credit as said records

and judicial proceedings have by law and usage in the courts of said State of Iowa.

Wherefore your petitioner respectfully prays that a writ of error may be issued out of this court, directed to the supreme court of the State of Kansas, commanding said court to certify and send to this court a full and complete transcript of the records and all proceedings of said supreme court of the State of Kansas in said cause wherein The Chicago, Rock Island and Pacific Railway Company is plaintiff in error and E. H. Sturm is defendant in error, and that your petitioner may have such other and further relief and remedy in the premises as to this court may seem appropriate, and that said judgment of said supreme court of the State of Kansas in said case and every part thereof may be reversed by this honorable court; and your petitioner will ever pray.

M. A. LOW AND
W. F. EVANS,

Attorneys for Plaintiff in Error.

74 [Endorsed:] 10831. C., R. I. & P. R'y Co. v. E. H. Sturm. Petition for writ and assignment of errors. Filed Dec. 23, 1897. Jno. Martin, clerk sup. court.

75 Be it further remembered that on the 23rd day of December, A. D. 1897, there was filed in the office of the clerk of the supreme court of the State of Kansas a writ of error, which, — the allowance thereof endorsed thereon and all other endorsements, is in words and figures as follows, to wit:

76 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the honorable the justices of the supreme court of the State of Kansas, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of the plea which is in the supreme court of Kansas, the court before you, being the highest court of law and equity in said State in which a decision could be had in said suit between The Chicago, Rock Island and Pacific Railway Company, plaintiff in error, and E. H. Sturm, defendant in error, wherein a right, privilege, and immunity were and are claimed under the Constitution and statute of the United States and the decision was against the right, privilege, and immunity claimed thereunder, a manifest error hath happened, to the great damage of said The Chicago, Rock Island and Pacific Railway Company, as by its complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and equal justice done to the parties aforesaid in this behalf, do command you, if judgment be given therein, that, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 21st day

of January, 1898, next, in said Supreme Court to be then and there held, that, the records and proceedings being inspected, said Supreme Court may cause further to be done therein to correct that error *which* of right and according to the laws and customs of the United States should be done.

77 Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 23d day of December, in the year of our Lord one thousand eight hundred and ninety-seven.

[Seal U. S. Circuit Court, Dist. of Kansas.]

GEO. F. SHARITT,
Clerk U. S. Circuit Court, District of Kansas.

Allowed.

FRANK DOSTER,
Chief Justice of the Supreme Court of the State of Kansas.

78 [Endorsed:] 10831. C., R. I. & P. R'y Co. v. E. H. Sturm.
Writ of error. Filed Dec. 23, 1897. Jno. Martin, clerk sup.
court.

79 And also, on the 23rd day of December, A. D. 1897, there was filed in the office of the clerk of the supreme court of the State of Kansas a supersedeas bond; which bond, with the approval thereof endorsed thereon and with all other endorsements, is in words and figures as follows, to wit:

80 In the Supreme Court of the State of Kansas.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY,	}
Plaintiff in Error,	
<i>vs.</i>	
E. H. STURM, Defendant in Error.	}

Know all men by these presents that we, The Chicago, Rock Island and Pacific Railway Company, a corporation organized and existing under and by virtue of the laws of the States of Illinois and Iowa, and John R. Mulvane, of the city of Topeka, State of Kansas, are held and firmly bound unto the said E. H. Sturm, defendant in error, his heirs, executors, and administrators, in the sum of one thousand dollars (\$1,000.00); to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, successors, executors, and administrators, firmly by these presents.

Scaled with our seals this 23rd day of December, 1897.

Whereas the above-named The Chicago, Rock Island and Pacific Railway Company hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the supreme court of the State of Kansas:

Now, therefore, the condition of this obligation is such that if the above-named The Chicago, Rock Island and Pacific Railway Company shall prosecute its said writ of error to effect and answer all

costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

THE CHICAGO, ROCK ISLAND AND
PACIFIC RAILWAY COMPANY,

By M. A. LOW,

Its Agent and General Attorney. [SEAL.]

JOHN R. MULVANE. [SEAL.]

Approved by—

FRANK DOSTER,

Chief Justice.

(Endorsed :) 10831. C., R. I. & P. R'y Co. v. E. H. Sturm. Bond.
Filed Dec. 23, 1897. Jno. Martin, clerk sup. court.

81 Be it further remembered that on the said 23rd day of December, A. D. 1897, the same being one of the regular judicial days of the July, A. D. 1897, term of the supreme court of the State of Kansas, before the Hon. Frank Doster, chief justice, sitting at his chambers in the city of Topeka, the following proceeding was had and remains of record, to wit:

Order allowing writ.

82 In the Supreme Court of the State of Kansas.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY,	}
Plaintiff in Error,	
v.	
E. H. STURM, Defendant in Error.	}

Upon consideration of the petition of said The Chicago, Rock Island and Pacific Railway Company, plaintiff in error in the above-entitled cause, the court does allow the writ of error prayed for therein upon said The Chicago, Rock Island and Pacific Railway Company giving bond according to law in the sum of one thousand dollars (\$1,000.00), which will operate as a supersedeas bond.

FRANK DOSTER,

Chief Justice.

83 [Endorsed :) 10831. C., R. I. & P. R'y Co. v. E. H. Sturm.
Order allowing writ of error. Filed Dec. 23, 1897. Jno.
Martin, clerk sup. court.

84 Be it further remembered that on the 27th day of December, A. D. 1897, there was filed in the office of the clerk of the supreme court of the State of Kansas a citation, which, with the service thereof endorsed thereon and all other endorsements, is in words and figures as follows, to wit:

85 The United States of America to E. H. Sturm, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at Washington,

D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Kansas, wherein The Chicago, Rock Island and Pacific Railway Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in said writ mentioned, should not be corrected and why speedy justice should not be done in that behalf.

Witness the Honorable Frank Doster, chief justice of the supreme court of the State of Kansas, this 23rd day of December, 1897.

[Seal Supreme Court, State of Kansas.]

FRANK DOSTER,

Chief Justice of the Supreme Court of the State of Kansas.

Attest: JNO. MARTIN,

Clerk Supreme Court.

We hereby accept due and legal service of this citation on behalf of said defendant in error, E. H. Sturm, and acknowledge the receipt of a copy of the same this 24th day of December, 1897.

V. D. BULLEN,
THOS. DEVER,

Attorneys of Record for Defendant in Error, E. H. Sturm.

86 [Endorsed:] 10831. C., R. I. & P. R'y Co. v. E. H. Sturm.
Citation. Filed Dec. 27, 1897. Jno. Martin, clerk sup. court.

87 In the Supreme Court of the State of Kansas.

C., R. I. & P. R'LY Co., Plaintiff in Error, }

vs.

E. H. STURM, Defendant in Error. }

STATE OF KANSAS, }
Supreme Court, } ss:

I, Jno. Martin, clerk of the supreme court of the State of Kansas, do hereby certify that the above and foregoing is a full, true, correct, and complete transcript of all the pleadings and papers filed and of all the proceedings had in the above-entitled cause, as the same are entered and now appear of record in my office.

Witness my hand and the seal of the supreme court of the State of Kansas hereto affixed, at my office, in the city of Topeka, this 19th day of January, A. D. 1898.

[Seal Supreme Court, State of Kansas.]

JNO. MARTIN,

Clerk Supreme Court,

By ———, Deputy.

88 In the Supreme Court of the State of Kansas.

C., R. I. & P. R'L'Y Co., Plaintiff in Error, }
 vs.
 E. H. STURM, Defendant in Error. }

STATE OF KANSAS, } ss.
 Supreme Court, }

In obedience to the command of the writ of error issued from the Supreme Court of the United States of America, issued in the above-entitled cause, I, Jno. Martin, clerk of the supreme court of the State of Kansas, do herewith transmit to the said Supreme Court of the United States of America a duly certified transcript of the record and proceedings of the supreme court of the State of Kansas in said cause above entitled, with all things concerning the same.

In witness whereof I have hereunto set my hand and caused the official seal of the supreme court of the State of Kansas to be hereto affixed, at my office, in the city of Topeka, this 19th day of January, A. D. 1898.

[Seal Supreme Court, State of Kansas.]

JNO. MARTIN,
 Clerk Supreme Court,
 By ———, Deputy.

Endorsed on cover: Case No. 16,788. Kansas supreme court. Term No., 236. The Chicago, Rock Island & Pacific Railway Company, plaintiff in error, vs. E. H. Sturm. Filed January 31st, 1898.

No. 236.

CRANE & CO., TYPE-CASTERS.

Brief of Evans & Low, for P. C.

Filed Feb. 15, 1899.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1898.

THE CHICAGO, ROCK ISLAND & PACIFIC

RAILWAY COMPANY, *Plaintiff in Error*,

vs.

E. H. STURM, *Defendant in Error*.

No. 236.

IN ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

STATEMENT.

THE plaintiff in error contends that the State courts in the case at bar denied the defendant below a right, privilege and immunity to which it was entitled under the Federal Constitution, which provides that—

“Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State, and the Congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.”

And the act of Congress of May 26th, 1790, which, after prescribing the forms of authentication, enacts :

“And the said records and judicial proceedings so authenticated, shall have such faith and credit given to them in every other court within the United States as they have by law or usage in the courts of the State from whence the said records are or shall be taken.”

The facts on which this contention is based are as follows :

On the 18th day of January, 1894, E. H. Sturm, a citizen of Kansas, defendant in error, commenced this action against the plaintiff in error before a justice of the peace in the county of Republic, State of Kansas, to recover the sum of \$140, which he claims was due him for services rendered by him to plaintiff in error during the years 1893 and 1894, in said State. On the 5th day of February, 1894, he recovered judgment in said cause before the justice of the peace for the sum of \$110 and costs of suit against plaintiff in error. The railway company by proper proceedings appealed the case to the district court of said county of Republic, a transcript of the proceedings before the justice of the peace having been filed in the district court on the 12th day of March, 1894. Prior to the commencement of this action, and on the 13th day of December, 1893, one A. H. Willard, a citizen of the State of Iowa, brought an action be-

fore a justice of the peace in Pottawattamie county, Iowa, against E. H. Sturm, the defendant in error herein, and in said action sued out an attachment and garnished the plaintiff in error herein as a debtor of said Sturm. At all times in question the plaintiff in error in this action and the garnishee in said Iowa action was a corporation organized and existing under and by virtue of the laws of Illinois and Iowa, and owned and operated a railroad extending from the city of Chicago, in said State of Illinois, into and through the States of Iowa, Missouri, Kansas, Nebraska, and Colorado, and was, at all of said times, a citizen of said State of Iowa. On the 18th day of December, 1893, which was some time prior to the commencement of the case at bar, the plaintiff in error herein filed its answer as garnishee in said cause brought in the Iowa court as aforesaid, admitting that it was indebted to Sturm in the sum of \$77.17. On motion of the plaintiff therein, Willard, the action pending in Iowa was continued until February 20, 1894, when it was shown therein that Sturm was a non-resident of Iowa, and it was thereupon ordered by the court that notice of the pendency of said action be given the defendant Sturm by publication, which was done. On January 15th, 1894, and before the commencement of the action in Kansas, an alias writ of attachment was issued in the action brought

in Iowa and served on the garnishee therein, the plaintiff in error herein. At the time of the service of the second writ of attachment, as just stated, the railway company was indebted to Sturm in the sum of \$110, it being the same indebtedness sued for in Kansas. On the 20th day of February, 1894, a judgment was rendered in the Iowa action against the Railway Company, the garnishee, condemning the sum of \$95.17 of the amount due Sturm from the Railway Company and sued for in the Kansas case, to the payment of the amount due Willard from Sturm. From said judgment, the Railway Company, the garnishee, appealed to the district court of said county of Pottawattamie, in said State of Iowa, where said action was pending when the case at bar was tried in the district court of Republic county, Kansas. Sturm was notified of the commencement and pendency of the action in Iowa before it was tried, and of the garnishment proceedings, in ample time to protect his rights therein. He employed an attorney, and sent him to Iowa to look after the case, but for some reason the attorney made no appearance in the Iowa case. This is shown by the following evidence of Sturm given upon the trial of the Kansas case :

"Q. When were you first notified of the garnishment — in Iowa? A. It was in December, 1893."

¹ Record, 31.

"Q. Did you employ anybody to look after your case over in Iowa? A. Yes, sir.

"Q. Who was it? A. Mr. Cooper.

"Q. Who was Mr. Cooper? A. He is a lawyer that lives in Fairbury.

"Q. Did Mr. Cooper go over to Council Bluffs to appear for you there? A. Yes, sir."

The railway company, at the proper time, pleaded and proved in the Kansas case the commencement and pendency of the action brought in Iowa and the garnishment proceeding and the judgment therein as a defense to the claim of the defendant in error herein. It also asked, by a motion in writing, to which was attached a properly authenticated copy of the judgment and proceedings in the Iowa case, that the case at bar be continued until the disposition of the case in the Iowa court. The court overruled the motion, and refused to continue the case. On the trial the plaintiff in error introduced in evidence a duly authenticated copy of the proceedings and judgment in the Iowa case, but the court refused to give them any faith or credit, and rendered judgment against the plaintiff in error herein for the sum of \$110 and costs of suit, \$95.17 of which amount had previously been condemned by the judgment and proceedings in the Iowa case, as already stated. In rendering the judgment, the court said :

"I will say in this case, as I did in the other, that except for the Sharitt case, it would seem that the defense

set up by the defendant would be good—that is, that its garnishment in Iowa should be a defense to an action against it here; and although, as the Minnesota court says, that decisions seem to be contrary to the authorities (even its own former decision), yet it appears to be the decision of our Supreme Court, and, being such, it is my duty to follow it, although it seems to work a hardship—that is, to hold that if you owe money here and go into an adjoining State you can there be compelled by legal proceedings to pay it to my creditors there, and then when you return here, to also pay it to me. If that is the law, it is time it were known. It certainly contradicts the old saw, ‘that you can’t have your cake and eat it.’ Both States ought not to compel defendant to pay, even though the debt be exempt here. One payment should be enough. The main question in the case is, Which State has the better right to compel payment? In view of the Sharitt decision, and that the question ought to be settled, and that if the defendant does not take the case up it won’t go, the decision of this court is against the defendant and for the plaintiff in the sum agreed upon, to wit, \$110.00, with interest from this date at 6 per cent.”¹

The plaintiff in error then took the case to the Kansas Court of Appeals, where the judgment of the District Court was affirmed. The judgment of the Kansas Court of Appeals was afterwards affirmed by the Supreme Court of Kansas.

¹ Record, 50.

SPECIFICATION OF ERRORS.

Said plaintiff in error says that in the record and proceedings of said Supreme Court of the State of Kansas in said cause, there is manifest error in this:

1. That said court erred in affirming the judgment of the Kansas Court of Appeals.

2. That said court erred in refusing and failing to give full faith and credit to the judgment and judicial proceedings of the courts of the State of Iowa in the case of A. H. Willard, plaintiff, v. E. H. Sturm, defendant, and The Chicago, Rock Island & Pacific Railway Company, garnishee.

3. That said court refused to give any faith or credit to the judgment and judicial proceedings of the courts of the State of Iowa in the case of A. H. Willard, plaintiff, v. E. H. Sturm, defendant, and The Chicago, Rock Island & Pacific Railway Company, garnishee.

4. That said court violated § 1 of Art. IV of the Constitution of the United States.

5. That said court violated § 905 of the Revised Statutes of the United States, which provides that "the said records and judicial proceedings, authenticated as aforesaid, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from whence said records are or shall be taken."

6. That said court erred in refusing to give to the judgment and judicial proceedings of the courts of the State of Iowa in the case of A. H. Willard, plaintiff, v. E. H. Sturm, defendant, and The Chicago, Rock Island & Pacific Railway Company, garnishee, such faith and credit as such judgment and judicial proceedings have by law and usage in the courts of the State of Iowa.

ARGUMENT.

The plaintiff in error, being a citizen of the State of Iowa, and owning and operating a railroad therein, is amenable to its laws and is bound by, and is required to conform to all orders and judgments of its courts.

Before the commencement of the case at bar, the plaintiff in error in the case brought in Iowa was "attached as garnishee and . . . notified and required not to pay any debt due" by it to the defendant in error, Sturm, "or thereafter to become due him," and to retain in its possession all of the property of said Sturm "now or hereafter being in" the possession, custody or control of the plaintiff in error.¹ This attachment and garnishment was valid and binding on the Railway Company, and was authorized by § 2851 of the statutes of Iowa, which reads as follows :

"SECTION 2851. (*Petition must state.*)—The petition which asks an attachment must in all cases be sworn to. It must state :

"1. That the defendant is a foreign corporation, or acting as such ; or,

"2. That he is a non-resident of the State."²

¹Record, 20, 21, 22.

| ²Record, 47.

Debts due to a defendant in that State are attached in the following manner:

"SECTION 2967. Debts due the defendant, or property of his held by third persons and which cannot be found, or the title to which is doubtful, are attached by garnishment thereof."¹

"SECTION 2975. (As amended by ch. 58, 18th G. A.) (*How affected.*)—The attachment by garnishment is affected by informing the supposed debtor or person holding the property, that he is attached as garnishee, and by leaving with him a written notice to the effect that he is required not to pay any debt due by him to the defendant, or thereafter to become due, and that he must retain possession of all property of the said defendant then, or thereafter, being in his custody or under his control, in order that the same may be dealt with according to law, and the sheriff shall summon such persons as garnishees as the plaintiff may direct. But no judgment shall be entered in any garnishment proceeding condemning the property or debt in the hands of the garnishee until the principal defendant shall have had ten days' notice of such proceedings. If the case is pending in the district or circuit court, the notice shall be served in the same manner as original notices are required to be served. If the case is pending before a justice of the peace, the defendant shall have at least five days' notice of such proceedings, if he be a resident of the county; otherwise service of such notice may be made by posting the same in three public places in the township."²

Service by publication of the defendant Sturm in the Iowa case was authorized by § 2616 of the Revised Code

¹ Record, 47.

| ² Record, 46.

of Iowa of 1888, which, so far as it is material, is as follows :

"SECTION 2618. Service may be made by publication when an affidavit is filed and personal service cannot be made on the defendant within this State, in either of the following cases :

"5. In actions brought against a non-resident of this State."¹

The undisputed evidence in the case at bar shows that the statutes of Iowa were complied with in every way in the Iowa case, and that the justice of the peace and the district court in that case had jurisdiction of Willard, the plaintiff therein, and of the garnishee the Railway Company, the plaintiff in error herein. The opinion of the Supreme Court of Kansas in the case at bar is as follows :

"*Per Curiam* :

"The facts in these cases clearly bring them within the ruling in *Missouri Pacific Ry. Co. v. Sharitt*, 43 Kan. 375, and for the reasons stated by Mr. Justice Valentine in that case the judgment in these cases will be affirmed."¹

The facts in the Sharitt case referred to in the opinion just quoted are as follows :

Sharitt, a citizen and resident of Kansas, while in the employ of the Missouri Pacific Railway Company, during the month of June, 1887, "earned and became and was entitled to receive from" said company the sum of \$79. On the 13th day of July, 1887, at St. Louis, Missouri, the

¹ Record, 48.

| ¹ Record, 59.

Missouri Pacific Railway Company "was garnished by and before a justice of the peace of that State, at the suit of J. P. Stewart, a resident of Missouri, against Sharitt, and ordered to answer therein, which it did on the 28th day of July, 1887, and on the 29th day of September, 1887, it was ordered to pay into that court the amount so due from it to said Sharitt. On the 27th day of July, 1887, Sharitt brought an action in Kansas against the Railway Company to recover the amount of his wages, to which the defendant answered by setting up the garnishment proceedings in the Missouri court in the case brought by Stewart.

The Supreme Court held in the Kansas case, in an opinion by Mr. Justice VALENTINE, from which Mr. Chief Justice HORTON dissented, that because Sharitt was a citizen of the State of Kansas, and earned the money in that State, the Missouri court could not, by publication of a notice to Sharitt, without personal service on him, obtain jurisdiction of the indebtedness due Sharitt from the Railway Company, and that therefore the action in the Missouri court was void and no defense to the action brought in Kansas by Sharitt. In that case Mr. Justice VALENTINE said :

"It will be seen from what has been said, that my concurrence in the decision in this case is founded almost wholly upon the theory that the Missouri court had no jurisdiction of Sharitt, or of anything belonging or appertaining to him, and therefore that there can be no such thing

as *lis pendens* by virtue of the Missouri proceeding with regard to the subject-matter of this action, which is the debt, and nothing in the Missouri proceeding then can be considered as valid or binding as against Sharitt. . . . But, not wishing to be misunderstood in this case, I will be a little more explicit as to some matters. I think that the Missouri court has jurisdiction of Stewart, the plaintiff in the Missouri action, and of the railway company, the garnishee; and that any judgment or order which might be rendered or made by the Missouri court as against Stewart or the railway company would be valid and binding as against them."

From this it is apparent that the judgment in the case at bar was rendered upon the theory that the Iowa court did not and could not obtain jurisdiction over the indebtedness due Sturm from the Railway Company, without personal service upon Sturm.

The evidence showed, and the fact was not denied, that the judgment and garnishment proceedings in Iowa were valid under the laws of that State, and would have been a perfect and complete defense to any action which Sturm might have brought in that State to recover his wages from the plaintiff in error.¹

The court in the case at bar refused to give any force or effect to the judgment and garnishment proceedings in the Iowa case, which were pleaded and proven upon the trial, and violated §1 of Art. 4 of the Federal Constitution, which provides that "Full faith and credit shall be

¹ Mooney v. R. Co., 60 Ia. 316;
Moore v. C. R. I. & P. Ry. Co.,
43 Ia. 385;

Willard v. C. R. I. & P. Ry.
Co., 96 Ia. 555.

given in each State to the public acts, records and judicial proceedings of every other State," as well as the act of Congress above referred to. This question cannot be taken out of the case, or the right of the plaintiff in error to have it considered by this court defeated, by the failure of the State court to make any reference to it in its opinion.¹

Under the decisions of this court it is well settled that the faith and credit spoken of in the Constitution and statute are not limited to the form of the record, and are not satisfied by its introduction in evidence upon the trial. It is the duty of the court not only to admit it in evidence when properly authenticated, but to give it "Full faith and credit," and "such faith and credit . . . as they have by law or usage in the courts of the State from whence said records are or shall be taken."²

This section of the Constitution and the act of Congress were and are intended to cover cases of the character of the one at bar. It was assumed by the framers of the Constitution, and Congress, that the garnishment and attachment procedure of the different States would be different, and that the procedure in some States, if measured by the laws of other States, would be held invalid and of no force.

¹ Green v. Van Buskirk, 5 Wall. 307; 7 id. 139;
Crapo v. Kelly, 16 Wall. 610;
Carpenter v. Strange, 141 U. S. 87, 103;
Columbia Water Power Co. v. Columbia St. Ry. L. & P.

Co., 19 Sup. Court Rep. 249, 252;
Cole v. Cunningham, 133 U. S. 107.
² Crapo v. Kelly, 16 Wall. 610, 619.

Mr. Justice MILLER, in speaking for this court on this question, used the following language :

"Another consequence is that the debtor of a non-resident may be sued by a garnishee process, or by a foreign attachment, as it is sometimes called, and be compelled to pay the debt to some one having a demand against his creditors; but if he can be caught in some other State, he may be made to pay the debt again to some person who had an assignment of it of which he was ignorant when he was attached. The article of the Constitution and the act of Congress relied on by the plaintiff in error, if not expressly designed for such cases as these, find in them occasions for their most beneficent operation."¹

This court, in considering that case on the merits, through Mr. Justice DAVIS, said —

"that the Supreme Court of New York necessarily decided *what* effect attachment proceedings in Illinois had by the law and usage in that State; and as it decided against *the* effect that Green claimed from them, this court had jurisdiction under the clause of the Constitution which declares that 'full faith and credit shall be given in each State to the public acts, records, and judicial proceedings in every other State' and the act of Congress of 1790, which gives to those proceedings the same faith and credit in other States that they have in the State in which they were rendered. This decision, supported as it was by reason and authority left for consideration on the hearing of the case, the inquiry whether the Supreme Court of New York did give to the attachment proceedings in Illinois, the same effect they would have received in the courts of that State."²

¹ Green v. Van Buskirk, 5 Wall. 307, 314.

² 7 Wall 139.

The decision of the U. S. Circuit Court of Appeals, Seventh Circuit, in the case of *Mooney v. Buford and George Mfg. Co.*¹ is applicable at this time. In that case the court said :

"If, in the ordinary case of foreign attachment, there can be rendered against a resident debtor a judgment in garnishment which, under the general principles of international law and the Constitution of the United States, the courts everywhere will respect as valid, there can be no objection, in reason or principle, to a like judgment against a foreign corporation, which, by law and by its own consent, has become subject to the service of process in the State where sued, as if chartered or incorporated there. In both cases, alike, there is due process of law; and, if in the State courts, the proceedings and the judgments, it is provided by act of Congress (Rev. St., § 905), 'Shall have such faith and credit given them in every court within the United States as they have by law or usage in the courts of the State from which they are taken;' or, as it is declared in section 1, art. 4, of the Federal Constitution, 'Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State.'"

The position of the Railway Company in the case at bar is much stronger than was that of the garnishee in the case just quoted from, for the reason that the plaintiff in error herein was a corporation and a citizen of Iowa, the State in which the judgment in the garnishment proceeding was rendered.

"There is no doubt," says the Supreme Court of Missouri, "that under the provisions of Article IV, Section 1,

¹ 72 Fed. Rep. 32, 39.

of the Constitution of the United States, full faith and credit must be accorded the public acts, records and judicial proceedings of a sister State; and had the debt in this instance been condemned by a court of competent jurisdiction in the State of Iowa, in a proceeding which is, or is equivalent to, a proceeding *in rem*, there can exist no doubt that a judgment thus rendered could not be contested in this State by a party to the record in Iowa claiming the debt or property.”¹

In a case on all fours with the one at bar, *ROTHROCK, J.*, in speaking for the Supreme Court of Iowa, said :

“Further, it seems to us that the rule established in that case ignores the fact that the proceedings in garnishment were entitled to full faith and credit as a judgment of a sister State; and that being proceedings *in rem*, and the debt being condemned by a court having jurisdiction, the judgment cannot be contested in another State by a party to the record claiming the property.”²

The court in the Iowa case did obtain jurisdiction over the indebtedness due from the garnishee therein to Sturm. There is a marked distinction between the attachment of personal property and the garnishment of an indebtedness. In order to effect an attachment of property, the property must be found and seized within the State where it is visible and tangible, and, therefore, has its situs wherever seized, but this is impossible in the case of garnishment, as a debt is invisible and intangible and its situs must be wherever the debtor—the garnishee—is served. While

¹Howland v. C. R. I. & P. Ry. Co., 131 Mo. 474, 480.

²Moore v. C. R. I. & P. Ry. Co., 43 Iowa. 385, 388.

the garnishment of a debt is often called a mode of attachment, yet it does not operate as a specific lien upon any property of the garnishee or of the defendant, such as is acquired by the actual seizure of property.

The effect of the judgment in garnishment is merely to determine the existence and amount of a debt, to substitute the plaintiff for the defendant, as the person to whom it is payable and to require payment by the garnishee.¹

A debt or a chose in action cannot, therefore, have a physical location or situs.

In referring to this question the Supreme Court of Rhode Island said :

"Now, it is evident that a chose in action, being an intangible chattel, cannot, strictly speaking, have a physical location. Its locus or situs is, therefore, a legal fiction, and, being so, it may have a different situs for different purposes; that is, a conventional situs. Thus, the situs thereof for the purposes of taxation is the domicile of the creditor or payee of the debt. For the purposes of administration, so far as the non-resident creditor is concerned, it is also at his domicile. But, so far as the remedy of the creditors of the payee of the debt is concerned, the authorities are very uniformly to the effect that the situs of the debt is at the domicile of the debtor, and *that wherever the creditor might maintain a suit to recover the debt, there it may be attached as his property, provided the laws of the forum authorize it*; or, as said by Shiras, J., in *Mason v. Beebe*, 44 Fed. 559, 'The situs of the property for the purpose of jurisdiction is one thing, and its situs for the pur-

¹Cross v. Brown, (R. I.) 33 Atl. 144, 156;

Hall v. Mandlin, (Minn.) 59 N. W. Rep. 985.

pose of determining the right of the parties thereto is another, and the two are not necessarily the same.' " 1

The court in the Iowa case obtained jurisdiction of the indebtedness due Sturm from the Railway Company by the garnishment of the latter. On the commencement of that action no judgment was asked against the Railway Company. It was only notified not to pay or deliver to Sturm any debt or property due or belonging to him. Now, if that notice was not sufficient to reach the debt, in what manner did it or could it affect the garnishee? As the only purpose in serving the summons on the garnishee was to notify it not to pay money due to Sturm, it cannot be that the court had any jurisdiction or power to compel the garnishee to pay or surrender any property or debt over which the court had no jurisdiction. This being true, by the service of the garnishment summons on the Railway Company, the court obtained jurisdiction over the debt due Sturm from the Railway Company, the plaintiff in error.

A case directly in point is that of *Mooney v. Buford & George Mfg. Co.*, *supra*, decided by the U. S. Circuit Court of Appeals. In that case the court said :

"But, manifestly, the essentials of jurisdiction cannot rest upon a fiction, and if, in this class of cases, the situs of a debt or chose in action is essential, it must be the real situs. . . . No such fiction, however, is necessary, because the jurisdiction in such a case does not depend

¹ Cross v. Brown, *supra*.

upon the situs of the debt, but upon control over the debtor, obtained by means of due process, duly served. Even if, as in cases of domestic attachment, the creditor and the situs of the debt be within the State, effective jurisdiction in garnishment can be acquired only by the service of process upon the debtor. It is notice to the debtor that gives the plaintiff in garnishment a lien upon the debt, or an assignment of it; and, once that is accomplished, notice by publication or in such manner as may have been provided by statute, may be given to the principal defendant, upon which the court may proceed to final judgment, disposing of the debt as effectually as, upon like notice by publication, it may dispose of a chattel seized in attachment. . . . No court can rightfully disregard the lien upon the debt which is established by service of process in garnishment upon the debtor. For the purpose of taxation, debts belong, of course, to the creditors to whom they are payable, and follow their domicile, wherever that may be. . . . But when it is a question of garnishment, or of the administration of an estate consisting of credits, resort must be had to a forum which can reach the debtor. The obligation is in him, and can be enforced for the benefit of the plaintiff in attachment only by proceedings against him, wherever the evidence of the debt may be held."

Mr. Justice BREWER, in speaking for the Supreme Court of Kansas on this question, said :

"A mere debt is transitory, and may be enforced wherever the debtor or his property can be found, and if a creditor can enforce collection of his debt in the courts of this State, a creditor of such creditor should have equal facilities."¹

¹B. & M. R. R. Co. v. Thompson, 31 Kas. 180, 194.

Mr. Justice PECKHAM, in speaking for the Court of Appeals of New York, in *Guillander v. Howe*,¹ points out very clearly the distinction in this respect between debts and movables, consisting of tangible property, and says:

"This court has recognized the distinction as to a situs, between debts and movables. The latter being capable of having a situs, not the former, as they follow the domicile of the owner."

In *Coskie v. Webster*,² Mr. Justice GREER made a like distinction, and remarked:

"A debt is a mere incorporeal right. It has no situs, and follows the person of the creditor."

The same rule is stated very clearly by the United States Circuit Court in the case of *Connor v. Hanover Insurance Company*.³ In that case the plaintiff procured insurance of the defendant upon a building situated in the State of Michigan, of which State she was a resident. The defendant, the Insurance Company, was organized under the laws of New York, and had its principal place of business in the city of New York, but it transacted an insurance business in Michigan, Illinois, and other States of the Union. A loss covered by the policy, having occurred, it was adjusted, and soon thereafter the claim against the insurance company was assigned by the plaintiff to the parties for whose use the action was brought. Prior to the loss the plaintiff had become indebted to a certain citizen

¹ 35 N. Y. 657, 661.

² 2 Wall. Jr. 131.

³ 28 Fed. Rep. 549.

of the State of Illinois, residing at Chicago, who immediately after the occurrence of the fire, and before the loss was adjusted, commenced suit by attachment against plaintiff and garnished the insurance company in the State of Illinois. The garnishment process was properly served upon the garnishee, but no service of the principal writ was had upon the defendant, except by publication. The insurance company pleaded as a defense to the action brought in Michigan, the pendency of the action in Illinois and the garnishment proceedings therein. The court held that the garnishment proceeding in the State of Illinois was a complete defense to the action brought in Michigan.

Equally as strong is the following language of the Supreme Court of Vermont :

"It is true that the trustee process is sometimes called 'attaching a debt,' because it creates a lien upon the debt as attachment does upon personal property. But the validity of the two kinds of lien rests on wholly different grounds. Attachment of personal property must be by taking possession of it,—but no possession can be taken of a debt. To make the lien valid against the debt, all that is required is notice to the debtor (the trustee) of the suit—a mere summons."¹

The same principle was stated by this court in the case of *Cole v. Cunningham et al.*² That was an action brought in Massachusetts by Cunningham and Tolman, assignees

¹ *Cahoon v. Morgan et al.*, 38 Vt. 236.

² 133 U. S. 107.

of one Bird, against Butler, Hayden & Co., to enjoin the latter from prosecuting two actions brought by them (in the name of Fayerweather) in New York against Bird, in which Claflin & Co. (residents of New York) had been garnished as debtors of Bird. The parties to the injunction suit in Massachusetts were all residents of that State. The defendants in the action brought in Massachusetts had commenced the suit in New York against Bird, and had caused Claflin & Co. to be garnished as Bird's debtors. Although personal service was not obtained against Bird in the New York cases, the Supreme Court of Massachusetts and this court held that the injunction was properly allowed in the Massachusetts case. Neither of the courts held that the garnishment proceedings in New York were invalid, or that the New York court did not, by the garnishment proceedings, obtain jurisdiction over the indebtedness due Bird from Claflin & Co. On the contrary, the decision of the Massachusetts Supreme Court, and of this court, was predicated of the fact that the garnishment proceedings in the New York cases were valid, and gave the court in those cases jurisdiction over the subject-matter of the action,—the money due Bird from Claflin & Co.

In that case this court said :

“Nothing can be plainer, than that the act of Butler, Hayden & Co. in causing the property of the insolvent debtors to be attached in a foreign jurisdiction, tended directly to defeat the operation of the insolvent law in its

most essential features, and it is not easy to understand why such acts could not be restrained, within the practice to which we have referred."

If the court in New York by the garnishment proceeding did not obtain jurisdiction of the indebtedness due Bird from Claflin & Co. without personal service upon Bird, as counsel for defendant in error in the case at bar contends, in what manner could those proceedings tend to defeat the insolvent laws of Massachusetts? In other words, how could void proceedings in the courts of New York affect the law or proceedings in the courts of Massachusetts? The validity of the proceeding in the New York cases, and the fact that the court by the garnishment proceedings obtained jurisdiction of the amount due Bird from Claflin & Co., was the foundation of the action brought in Massachusetts.

In that case, Mr. Justice MILLER, in referring to the principle for which we contend, and about which there was no dispute, said :

"Indeed, it is *not questioned* in the very learned opinion of the court in this case, that if Butler, Hayden & Co. had been permitted to go on with their proceeding in New York, they would have secured an order in the court in which the proceedings were pending, that the garnishee, Aaron Claflin & Co., should pay the amount of their indebtedness to the plaintiff in that action. . . .

"The record introduced from the court of New York in this case had the effect, in that State, to give Butler, Hayden & Co. a lien on the indebtedness of Aaron Claflin

& Co. to their creditor, Bird, which in that court would have ripened into a judgment and been enforced."

This proposition was not denied by the court in that case, but it was in effect admitted, for the judgment of the lower court granting the injunction was affirmed for the reason that if the defendants were permitted to prosecute to judgment the actions in New York, the result would be that the insolvent laws of Massachusetts would thereby be defeated.

That case was decided on the ground on which all such actions are allowed, which has been well stated, as follows:

"On the contrary, the case proceeds on the ground that the defendants, if allowed to proceed with their action, will perfect a lien which is now inchoate under their attachment, and will thereby establish a *valid* title to the property of the insolvent debtors under the laws of Pennsylvania."¹

The case brought in the Iowa court against Sturm and the plaintiff in error as garnishee has been taken to and decided by the Supreme Court of that State since the trial of the case at bar in the district court.² In that case the Supreme Court said:

"From the time of the commencement of this action and the service of the notice of garnishment, the wages due and owing Sturm by the railway company were, to all intents and purposes, in the justice court, or, at least, sub-

¹Dehon v. Foster et al., 4 Allen, 545, 551.

²Willard v. Sturm et al., 96 Iowa 555.

ject to its jurisdiction. This jurisdiction could not be defeated by Sturm's action in the Kansas courts, taken after plaintiff had commenced his suit in this State. It is said, however, that, if this judgment is allowed to stand, the garnishee may be compelled to pay its debt twice. This is, no doubt, true, and it is certainly unfortunate, but it is no reason for relaxing well-settled rules of law. The court of this State first obtained jurisdiction, and must retain it to the end."

The rule is now well settled that the court in the Iowa case obtained jurisdiction over the indebtedness due from the Railway Company to Sturm by the service of the garnishment summons or notice upon the garnishee and the publication of notice to Sturm.¹

This being true, the judgment and garnishment proceedings in the Iowa case are a complete defense to the case at bar. If they are not, the plaintiff in error will be compelled to pay its debt twice,—once in Iowa to the creditors of Sturm, and also in Kansas to Sturm himself. Such a hardship could not be imposed on the plaintiff in error, as it is not contended that there was any fraud in the Iowa judgment or proceedings, or that there was any collusion between the plaintiff in error and Willard.

¹ Nat'l Fire Ins. Co. v. Chambers et al., 32 Atl. Rep. 663, 669; Hdw. Mfg. Co. v. Lang & Co., 127 Mo. 242, 246; Howland v. C. R. I. & P. Ry. Co., 134 id. 474; Harvey v. Great Northern R. Co., 50 Minn. 405; Mooney v. R. Co., 63 Iowa, 345; Neufelder v. German Am. Ins. Co., (Wash.) 33 Pac. Rep. 870;

R. Co. v. Crane, 102 Ill. 249; Newland v. Circuit Judge, 85 Mich. 151; Carson v. R. Co., 88 Tenn. 646; Mashassuch Felt Mills v. Blanding, 17 R. I. 297; R. Co. v. Tyson, 48 Ga. 467; Ins. Co. v. Woodworth, 111 U. S. 138.

"Nothing can be more clearly just," says Chancellor Kent, "than that a person who has been compelled by a competent jurisdiction to pay a debt once should not be compelled to pay it over again. It has, accordingly, been a settled and acknowledged principle, in the English courts, that where a debt has been recovered of the debtor, under this process of foreign attachment, in any English colony, or in these United States, the recovery is a protection, in England, to a garnishee against his original debtor, and he may plead it in bar. (*Chevalier, Assignee of Dormer, v. Lynch*, Doug. 170; *Cleve v. Mills*, Cooke's B. L. 243; *Allen v. Dundas*, 3 Term Rep. 125; and see also a recognition of the principle in 4 Term Rep. 187; 1 H. Bl. 669, 671, 683; 2 H. Bl. 408, 410.)

"If, then, the defendant would have been protected under a recovery had by virtue of the attachment, and could have pleaded such recovery in bar, the same principle will support a plea in abatement of an attachment pending, and commenced prior to the present suit. The attachment of the debt in the hands of the defendant fixed it there in favor of the attaching creditors; the defendant could not afterwards lawfully pay it over to the plaintiff. The attaching creditors acquired a lien upon the debt binding upon the defendant; and which the courts all over our governments, if they recognize such proceedings at all, cannot fail to regard. '*Qui prior est tempore potior est jure.*' . . . If we were to disallow a plea in abatement of the pending attachment, the defendant would be left without protection, and be obliged to pay the money twice; for we may reasonably presume that, if the priority of the attachment in Maryland be ascertained, the courts in that State would not suffer that proceeding to be defeated by the subsequent act of the defendant going

abroad and subjecting himself to a suit and recovery here." ¹

In the case of *Harvey v. Great Northern Ry. Co.*² the court said :

"The pendency of a prior action by foreign attachment in another jurisdiction, which binds the debt, may *always* be set up by way of defense to a suit by the defendant in the attachment to recover the same debt. This constitutes an exception to the general rule that *lis pendens* in a foreign court is not a good plea. An attachment is in the nature of proceedings *in rem*, the *res* being the debt or other property attached, and the *lis pendens* in such proceedings, before the tribunals of another jurisdiction, is held to be a good plea in abatement of a suit. This rule is essential to prevent a collision in the jurisdiction of courts, as well as for the protection of a party summoned as garnishee or trustee, who might otherwise, without any fault of his own, be in danger of being compelled to pay the same debt twice. *Embree v. Hanna, supra*; *Wallace v. McConnell*, 13 Pet. 136; *Bank v. Rollins*, 99 Mass. 313; *Railroad Co. v. May*, 25 Ohio St. 347; 2 Kent Com. 122. We have examined all the cases cited by plaintiff's counsel, and none of them, in our opinion, sustain his contention."

We respectfully submit that the judgment of the Supreme Court of Kansas should be reversed.

W. F. EVANS,

Attorney for Plaintiff in Error.

M. A. LOW,

Of Counsel.

¹ 5 Johns. 101.

| ² 52 N. W. Rep. 906.

CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY *v.* STURM.

ERROR TO THE SUPREME COURT OF THE STATE OF KANSAS.

No. 236. Submitted April 5, 1899. — Decided May 23, 1899.

Sturm sued the railway company in a justices' court in Kansas for wages due, and recovered for the full amount claimed. The company appealed to the county district court. When the case was called there for trial, the company moved for a continuance on the ground that a creditor of Sturm had sued him in a court in Iowa, of which State the railway company was also a corporation, and had garnisheed the company there for the wages sought to be recovered in this suit, and had recovered a judgment there from which an appeal had been taken which was still pending. The motion for continuance was denied, the case proceeded to trial, and judgment was rendered for Sturm for the amount sued for, with costs. A new trial was moved for, on the ground, among others, that the decision was contrary to and in conflict with section 1, article IV, of the Constitution of the United States. The motion was denied, and the judgment was sustained by the Court of Appeals and by the Supreme Court of the State. The case was then brought here. *Held*, that the Iowa court had jurisdiction, and that the Kansas courts did not give to the proceedings in Iowa the faith and credit they had in Iowa, and were consequently entitled to in Kansas, and the judgment must be reversed.

THE defendant in error brought an action against the plain-

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tiff in error in a justices' court of Belleville, Republic County, Kansas, for the sum of \$140, for wages due. Judgment was rendered for him in the sum of \$140 and interest and costs.

The plaintiff in error appealed from the judgment to the district court of the county, to which court all the papers were transmitted, and the case docketed for trial.

On the 10th of October, 1894, the case was called for trial, when plaintiff in error filed a motion for continuance, supported by an affidavit affirming that on the 13th day of December, 1893, in the county of Pottawattomie and State of Iowa, one A. H. Willard commenced an action against E. H. Sturm in justices' court before Oride Vien, a justice of the peace for said county, to recover the sum of \$78.63, with interest at the rate of ten per cent per annum, and at the same time sued out a writ of attachment and garnishment, and duly garnisheed the plaintiff in error, and at that time plaintiff in error was indebted to defendant in error in the sum of \$77.17 for wages, being the same wages sought to be recovered in this action;

That plaintiff in error filed its answer, admitting such indebtedness;

That at the time of the commencement of said action in Pottawattomie County the defendant was a non-resident of the State of Iowa, and that service upon him was duly made by publication, and that afterwards judgment was rendered against him and plaintiff in error as garnishee for the sum of \$76.16, and costs of suit amounting to \$19, and from such judgment appealed to the district court of said county, where said action was then pending undetermined;

That the moneys sought to be recovered in this action are the same moneys sought to be recovered in the garnishment proceedings, and that under the laws of Iowa its courts had jurisdiction thereof, and that the said moneys were not at the time of the garnishment exempt from attachment, execution or garnishment; that the justice of the peace at all of the times of the proceedings was a duly qualified and acting justice, and that all the proceedings were commenced prior to the commencement of the present action, and that if the case

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be continued until the next term of the court the action in Iowa will be determined and the rights of plaintiff in error protected.

The motion was denied, and the plaintiff in error pleaded in answer the same matters alleged in the affidavit for continuance, and attached to the answer a certified copy of the proceedings in the Iowa courts. It also alleged that it was a corporation duly organized under the laws of the States of Illinois and Iowa, doing business in the State of Kansas.

The defendant in error replied to the answer, and alleged that the amount due from plaintiff in error was for wages due for services rendered within three months next prior to the commencement of the action; that he was a resident, head of a family, and that the wages were exempt under the laws of Kansas, and not subject to garnishment proceedings; that plaintiff in error knew these facts, and that the Iowa court had no jurisdiction of his property or person.

Evidence was introduced in support of the issues, including certain sections of the laws of Iowa relating to service by publication, and to attachment and garnishment, and judgment was rendered for the defendant in error in the amount sued for.

A new trial was moved, on the ground, among others, that the "decision is contrary to and in conflict with section 1, article IV, of the Constitution of the United States."

The motion was denied.

On error to the Court of Appeals, and from thence to the Supreme Court, the judgment was affirmed, and the case was then brought here.

The defendant in error was notified of the suit against him in Iowa and of the proceedings in garnishment in time to have protected his rights.

The errors assigned present in various ways the contention that the Supreme Court of Kansas refused to give full faith and credit to the records and judicial proceedings of the courts of the State of Iowa, in violation of section 1, article IV, of the Constitution of the United States, and of the act of Congress entitled "An act to prescribe the mode in which the public acts, records and judicial proceedings in each State

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shall be authenticated so as to take effect in every other State," approved May 26, 1790.

Mr. W. F. Evans and *Mr. M. A. Low* for plaintiff in error.

No appearance for defendant in error.

MR. JUSTICE McKENNA, after making the foregoing statement, delivered the opinion of the court.

How proceedings in garnishment may be availed of in defence — whether in abatement or bar of the suit on the debt attached or for a continuance of it or suspension of execution — the practice of the States of the Union is not uniform. But it is obvious and necessary justice that such proceedings should be allowed as a defence in some way.

In the pending suit plaintiff in error moved for a continuance, and not securing it pleaded the proceedings in garnishment in answer. Judgment, however, was rendered against it, and sustained by the Supreme Court, on the authority of *Missouri Pacific Railway Co. v. Sharitt*, 43 Kansas, 375, and "for the reasons stated by Mr. Justice Valentine in that case."

The facts of that case were as follows: The Missouri Pacific Railway Company was indebted to Sharitt for services performed in Kansas. Sharitt was indebted to one J. P. Stewart, a resident of Missouri. Stewart sued him in Missouri, and attached his wages in the hands of the railway company, and the latter answered in the suit in accordance with the order of garnishment on the 28th of July, 1887, admitting indebtedness, and on the 29th of September was ordered to pay its amount into court. On the 27th of July Sharitt brought an action in Kansas against the railway company to recover for his services, and the company in defence pleaded the garnishment and order of the Missouri court. The amount due Sharitt having been for wages, was exempt from attachment in Kansas. It was held that the garnishment was not a defence. The facts were similar therefore to those of the case at bar.

The ground of the opinion of Mr. Justice Valentine was

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that the Missouri court had no jurisdiction because the *situs* of the debt was in Kansas. In other words, and to quote the language of the learned justice, "the *situs* of a debt is either with the owner thereof, or at his domicile; or where the debt is to be paid; and it cannot be subjected to a proceeding in garnishment anywhere else. . . . It is not the debtor who can carry or transfer or transport the property in a debt from one State or jurisdiction into another. The *situs* of the property in a debt can be changed only by the change of location of the creditor who is the owner thereof, or with his consent."

The primary proposition is that the *situs* of a debt is at the domicile of a creditor, or, to state it negatively, it is not at the domicile of the debtor.

The proposition is supported by some cases; it is opposed by others. Its error proceeds, as we conceive, from confounding debt and credit, rights and remedies. The right of a creditor and the obligation of a debtor are correlative but different things, and the law in adapting its remedies for or against either must regard that difference. Of this there are many illustrations, and a proper and accurate attention to it avoids misunderstanding. This court said by Mr. Justice Gray in *Wyman v. Halstead*, 109 U. S. 654, 656: "The general rule of law is well settled, that for the purpose of founding administration all simple contract debts are assets at the domicile of the debtor." And this is not because of defective title in the creditor or in his administrator, but because the policy of the State of the debtor requires it to protect home creditors. *Wilkins v. Ellett*, 9 Wall. 740; 108 U. S. 256. Debts cannot be assets at the domicile of the debtor if their locality is fixed at the domicile of the creditor, and if the policy of the State of the debtor can protect home creditors through administration proceedings, the same policy can protect home creditors through attachment proceedings.

For illustrations in matters of taxation, see *Kirtland v. Hotchkiss*, 100 U. S. 491; *Pullman's Car Co. v. Pennsylvania*, 141 U. S. 18; *Savings and Loan Society v. Multnomah County*, 169 U. S. 421.

Our attachment laws had their origin in the custom of

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London. Drake, § 1. Under it a debt was regarded as being where the debtor was, and questions of jurisdiction were settled on that regard. In *Andrews v. Clerke*, 1 Carth. 25, Lord Chief Justice Holt summarily decided such a question, and stated the practice under the custom of London. The report of the case is brief, and is as follows:

"Andrews levied a plaint in the Sheriff's Court in London and, upon the usual suggestion that one T. S. (the garnishee) was debtor to the defendant, a foreign attachment was awarded to attach that debt in the hands of T. S., which was accordingly done; and then a diletur was entered, which is in nature of an imparlance in that court.

"Afterwards T. S. (the garnishee) pleaded to the jurisdiction setting forth that the cause of debt due from him to the defendant Sir Robert Clerke, and the contract on which it was founded, did arise, and was made at H. in the county of Middlesex, *extra jurisdictionem curiæ*; and this plea being overruled, it was now moved (in behalf of T. S., the garnishee,) for a prohibition to the sheriff's court aforesaid, suggesting the said matter, (viz.) that the cause of action did arise *extra jurisdictionem*, etc., but the prohibition was denied because the debt always follows the person of the debtor, and it is not material where it was contracted, especially as to this purpose of foreign attachments; for it was always the custom in London to attach debts upon bills of exchange, and goldsmith's notes, etc., if the goldsmith who gave the note on the person to whom the bill is directed, liveth within the city without any respect had to the place where the debt was contracted."

The idea of locality of things which may be said to be intangible is somewhat confusing, but if it be kept up the right of the creditor and the obligation of the debtor cannot have the same, unless debtor and creditor live in the same place. But we do not think it is necessary to resort to the idea at all or to give it important distinction. The essential service of foreign attachment laws is to reach and arrest the payment of what is due and might be paid to a non-resident to the defeat of his creditors. To do it he must go to the

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domicil of his debtor, and can only do it under the laws and procedure in force there. This is a legal necessity, and considerations of *situs* are somewhat artificial. If not artificial, whatever of substance there is must be with the debtor. He and he only has something in his hands. That something is the *res*, and gives character to the action as one in the nature of a proceeding *in rem*. *Mooney v. Buford & George Mfg. Co.*, 72 Fed. Rep. 32; Conflict of Laws, § 549, and notes.

To ignore this is to give immunity to debts owed to non-resident creditors from attachment by their creditors, and to deny necessary remedies. A debt may be as valuable as tangible things. It is not capable of manual seizure, as they are, but no more than they can it be appropriated by attachment without process and the power to execute the process. A notice to the debtor must be given, and can only be given and enforced where he is. This, as we have already said, is a necessity, and it cannot be evaded by the insistence upon fictions or refinements about *situs* or the rights of the creditor. Of course, the debt is the property of the creditor, and because it is, the law seeks to subject it, as it does other property, to the payment of *his* creditors. If it can be done in any other way than by process against and jurisdiction of his debtor, that way does not occur to us.

Besides the proposition which we have discussed there are involved in the decision of the *Sharitt case* the propositions that a debt may have a *situs* where it is payable, and that it cannot be made migratory by the debtor. The latter was probably expressed as a consequence of the primary proposition and does not require separate consideration. Besides there is no fact of change of domicil in the case. The plaintiff in error was not temporarily in Iowa. It was an Iowa corporation and a resident of the State, and was such at the time the debt sued on was contracted, and we are not concerned to inquire whether the cases which decide that a debtor temporarily in a State cannot be garnisheed there, are or are not justified by principle.

The proposition that the *situs* of a debt is where it is to be paid, is indefinite. "All debts are payable everywhere, un-

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less there be some special limitation or provision in respect to the payment; the rule being that debts as such have no *locus* or *situs*, but accompany the creditor everywhere, and authorize a demand upon the debtor everywhere." 2 Parsons on Contracts, 8th edition, 702. The debt involved in the pending case had no "special limitation or provision in respect to payment." It was payable generally and could have been sued on in Iowa, and therefore was attachable in Iowa. This is the principle and effect of the best considered cases—the inevitable effect from the nature of transitory actions and the purpose of foreign attachment laws if we would enforce that purpose. *Embree v. Hanna*, 5 Johns. 101; *Hull v. Blake*, 13 Mass. 153; *Blake v. Williams*, 6 Pick. 286; *Harwell v. Sharp*, 85 Georgia, 124; *Harvey v. Great Northern Railway Co.*, 50 Minnesota, 405; *Mahany v. Kephart*, 15 W. Va. 609; *Leiber v. Railroad Co.*, 49 Iowa, 688; *National Fire Ins. Co. v. Chambers*, 53 N. J. Eq. 468; *Holland v. Mobile & Ohio Railroad*, 84 Tenn. 414; *Pomeroy y. Rand, McNally & Co.*, 157 Illinois, 176; *Berry Bros. v. Nelson, Davis & Co.*, 77 Texas, 191; *Weyth Hardware Co. v. Lang*, 127 Missouri, 242; *Holland v. Chicago, Rock Island &c. Railway*, 134 Missouri, 474.

Mr. Justice Valentine also expressed the view that "if a debt is exempt from a judicial process in the State where it is created, the exemption will follow the debt as an incident thereto into any other State or jurisdiction into which the debt may be supposed to be carried." For this he cites some cases.

It is not clear whether the learned justice considered that the doctrine affected the jurisdiction of the Iowa courts or was but an incident of the law of *situs* as expressed by him. If the latter, it has been answered by what we have already said. If the former, it cannot be sustained. It may have been error for the Iowa court to have ruled against the doctrine, but the error did not destroy jurisdiction. 134 Missouri, 474.

But we do not assent to the proposition. Exemption laws are not a part of the contract; they are part of the remedy and subject to the law of the forum. Freeman on Executions, sec. 209, and cases cited; also *Mineral Point Railroad v.*

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Barron, 83 Illinois, 365; *Carson v. Railway Co.*, 88 Tennessee, 646; *Couley v. Chilcote*, 25 Ohio St. 320; *Albrecht v. Treitschke*, 17 Nebraska, 205; *O'Connor v. Walter*, 37 Nebraska, 267; *Chicago, Burlington &c. Railroad v. Moore*, 31 Nebraska, 629; *Moore v. Chicago, Rock Island &c. Railroad*, 43 Iowa, 385; *Broadstreet v. Clark, D. & C. M. & St. Paul Railroad, Garnishee*, 65 Iowa, 670; *Stevens v. Brown*, 5 West Virginia, 450. See also *Bank of United States v. Donnally*, 8 Pet. 361; *Wilcox v. Hunt*, 13 Pet. 378; *Townsend v. Jemison*, 9 How. 407; *Walworth v. Harris*, 129 U. S. 365; *Penfield v. Chesapeake, Ohio &c. Railroad*, 134 U. S. 351. As to the extent to which *lex fori* governs, see *Conflict of Laws*, 571 *et seq.*

There are cases for and cases against the proposition that it is the duty of a garnishee to notify the defendant, his creditor, of the pendency of the proceedings, and also to make the defence of exemption, or he will be precluded from claiming the proceedings in defence of an action against himself. We need not comment on the cases or reconcile them, as such notice was given and the defence was made. The plaintiff in error did all it could and submitted only to the demands of the law.

In *Broadstreet v. Clark*, 65 Iowa, 670, the Supreme Court of the State decided that exemption laws pertained to the remedy and were not a defence in that State. This ruling is repeated in *Willard v. Sturm*, 98 Iowa, 555, and applied to the proceedings in garnishment now under review.

It follows from these views that the Iowa court had jurisdiction, and that the Kansas courts did not give to the proceedings in Iowa the faith and credit they had there, and were hence entitled to in Kansas.

The judgment is reversed and the case remanded for further proceedings not inconsistent with this opinion.

CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY v. DAVID CAMPBELL. No. 235. Error to the Supreme Court of the State of Kansas. Submitted with No. 236 on the same brief.

Syllabus.

MR. JUSTICE MCKENNA: The facts of this case are substantially the same as in No. 236, except as to the amount involved, and the court in which the proceedings in attachment were commenced, and

The judgment is reversed and the case remanded for further proceedings not inconsistent with this opinion.